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## PREFACE.

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IN the session of 1875 most of the statutes relating to the public health, and known collectively as the Sanitary Acts,<sup>a</sup> were, as respects England, exclusive of the Metropolis, consolidated with amendments by the Public Health Act 1875, (38 & 39 Vict. c. 55). The following pages attempt to furnish officers and members of sanitary authorities, as well as others who have occasion to consult the new Act, with a compendium of the law contained in that Act and the other Acts administered by or otherwise affecting urban and rural sanitary authorities.

Object of  
Work.

An historical summary of sanitary legislation in this country, passing quickly over the ground down to the Public Health Act 1848, and giving somewhat more in detail an account of the numerous statutes passed in the interval between 1848 and 1874, occupies the first of two introductory chapters. The second chapter explains the provisions of the Act of 1875, noticing more particularly the amendments of the law introduced thereby.

Arrange-  
ment of  
Work.

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<sup>a</sup> See the Chronological Table of these Acts in Appendix IV.

The Act itself follows, with notes and cross-references, and references to all the cases of importance decided on corresponding sections of former statutes. It may be worth while to observe here that, where a definite proposition of law can be extracted from a case, I have always endeavoured to state it; in other instances I have indicated what appeared to be the point of the case; occasionally, where the circumstances of a case are very special, or would require a detailed statement, I have merely cited it. At the end of the Act are printed the incorporated provisions of the Waterworks Clauses Acts, the Towns Improvement Clauses Act, the Towns Police Clauses Act, and the Markets and Fairs Clauses Act.

The remainder of the work consists of four Appendices.

Appendix I. contains the enactments relating to audit of the Poor Law Acts, inasmuch as the provisions of those Acts relating to audit are applied to the audit of the accounts of rural sanitary authorities.

Appendix II. contains miscellaneous statutes which are administered by or otherwise relate to the powers and duties of sanitary authorities.

In Appendix III. are found various Orders issued by the Local Government Board, with respect (for example) to medical officers of health and inspectors of nuisances, instructions as to byelaws, etc.

A chronological table of the "Sanitary Acts," distinguishing those repealed from those which are not



repealed by the Act of 1875, is given in Appendix IV.

Pains have been taken to make the Index as complete as possible, so that it may form, under the principal headings, a short digest of the law.

I have to express my best thanks to my friend Mr. S. Buller Provis of the Local Government Board for invaluable assistance; and in conclusion I may add that I was employed by the Government in the preparation of the Act of 1875, and have therefore necessarily for some time past devoted attention to the law relating to public health and local government.

G. A. R. FITZGERALD.

3, STONE BUILDINGS, LINCOLN'S INN.

*March, 1876.*



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## CHAPTER I.

### HISTORY OF LEGISLATION.

THE first simple conditions of health are an adequate supply of pure air and wholesome water, including under these conditions all that their attainment implies, and especially the removal of sewage and other noxious matters in a proper manner to a proper distance from the dwellings of man. These principles however are scarcely recognised, much less formulated and acted on, till increase of population, growth of towns, and density of habitations compel attention to them. In this country some protection to health and comfort was from early times afforded by the common law and by occasional statutes,<sup>a</sup> while the Sheriff's Tourn and Courts Leet exercised some local jurisdiction over nuisances. Indirectly too the Commissions of Sewers issued under the Statute of Sewers (23 Hen. VIII. c. 5) for preventing the damage arising from floods, and for cleansing and purging trenches sewers and ditches, must have contributed to the improvement of public health. But it was not until early in the eighteenth century that the distinctive wants of urban populations began to make themselves seriously felt, with the result that in many instances large towns obtained special Acts of Parliament including powers for paving lighting cleansing and drainage and for dealing with various nuisances.<sup>b</sup>

Condi-  
tions of  
health.

Early pro-  
visions for  
protection  
of health.

<sup>a</sup> In 1388 an Act was passed (12 Rich. II. c. 13) prohibiting the casting of garbage dung and other ordure into ditches and rivers near towns. A century later it was enacted by 4 and 5 Hen. VII. c. 3, reciting the nuisance arising from certain shambles in the city of London near St. Paul's 'to the jeopardous abiding of the King's most noble person and the over-great annoyance of the parishioners and others,' that no butcher should slay any manner of beast within the walls of London or in other walled towns.

<sup>b</sup> Throughout this introduction the metropolis is excluded from consideration as having always been the subject of special legislation, though some of the general Acts such as the Nuisances Removal Acts apply to it.



Impulse  
towards  
sanitary  
legislation  
in 1831  
and fol-  
lowing  
years.

In 1831 the first visitation of cholera gave a novel impulse to sanitary reform, but the alarm of the public and the debates in Parliament produced little immediate effect beyond an extension by the temporary Act of 2 and 3 W. IV. c. 10 of the power of the Privy Council to make regulations with respect to epidemic disease, under a section of the Quarantine Act of 1825 (6 G. IV. c. 78). In 1839 the first report of the Registrar-General who had been appointed under the Act of 1836 (6 and 7 W. IV. c. 86) for the registration of births deaths and marriages brought together a mass of information as to the excessive mortality in towns and its causes. A select committee of the House of Commons was obtained by Mr. Slaney, and reported in 1840, recommending (among other things) that provision should be made by Parliament for the regulation of buildings and construction of sewers and for the appointment of Local Boards of Health and Inspectors.

Royal  
Commis-  
sion of  
1843.

The elaborate report of Mr. Chadwick to the Poor Law Board in 1842 on the results of the inquiries instituted by that Board into the causes of disease, led to the Royal Commission of 1843 of which the Duke of Buccleuch was chairman. The Commissioners were directed to inquire into the causes of prevalent disease, the best means of improving the public health under existing laws, and as to possible amendments of those laws.

Their second report was made in 1845, and it is striking to what an extent subsequent legislation has been based on its recommendations.

In 1846 the first Act was passed for the removal of nuisances and prevention of diseases (9 and 10 Vict. c. 96) giving a summary jurisdiction to justices on the information of local authorities such as Town Councils, Improvement Commissioners, and Boards of Guardians; and also empowering the Privy Council to make regulations for guarding against the spread of contagious diseases. The Act was to remain in force till the end of the session of 1848.

In 1847 the Towns Improvement Clauses Act (10 and 11 Vict. c. 34) containing provisions adapted for incorporation in local Acts, as to construction of sewers, house drainage, regulation of buildings and streets, scavenging, prevention of nuisances, supply of water, regulation of slaughter-houses, and consumption of smoke, paved the way for further legislation.

Com-  
mence-  
ment of  
systematic  
sanitary  
legislation  
in 1848.

At length in the year 1848 (after two abortive attempts made by Lord Lincoln in 1845 and Lord Morpeth in 1847) systematic

provisions were made by a general Statute (11 and 12 Vict. c. 63) for such matters as sewerage paving supply of water regulation of streets and buildings and the removal of nuisances in towns. Since that date numerous Acts, conferring enlarged powers on the authorities charged with their execution, and extending the operation of sanitary provisions over the whole of the country, have been passed. Without some knowledge of these statutes the consolidating measure founded on them which became law last session cannot be understood: it is proposed therefore briefly to review their principal provisions, reserving for the notes on the Act of 1875 an explanation of the amendments which it has introduced.

The Public Health Act 1848—the foundation so to speak of a health code—established a new central authority called the General Board of Health and consisting of a president and two other members. This Board was to continue in office for five years and had power to appoint inspectors and a staff of officers.

Account  
of Public  
Health  
Act 1848,  
11 & 12  
Vict. c. 63.

The provisions of the Act were not by any means put in force throughout the kingdom, nor even universally in towns. The course adopted was to empower the General Board of Health to set up within known areas such as boroughs parishes and other places having a defined boundary, or within boundaries settled by the General Board, local authorities termed Local Boards for the execution of the provisions of the Act.

This power might be invoked on the spontaneous petition of one-tenth of the owners and ratepayers of the area, or it might be exercised by the General Board without any petition in any town or place where the death rate exceeded a certain proportion. In the case of a petition by owners and ratepayers of an area within which no local Act was in force, and if the area proposed by the petition was that selected by the General Board, the district was constituted by Order in Council; otherwise by a Provisional Order of the General Board confirmed by Parliament: in either case after local inquiry as to the proposed boundaries etc. of the district.

In districts conterminous with or wholly included in boroughs the Town Council were made the Local Board.

In composite districts or districts comprising the whole or part of a borough and also parts outside the borough, members selected

by the Town Council and members elected for the parts outside the borough formed the Local Board.

In districts not including the whole or any part of a borough the members of the Local Board were to be elected by owners and ratepayers.<sup>a</sup>

The Local Boards were directed to appoint officers and servants including a clerk treasurer surveyor and inspector of nuisances, and were empowered if they thought fit to appoint a medical officer of health. They were invested with powers for the construction and cleansing of sewers and drains, for the prevention of nuisances arising from drains privies offensive ditches etc., for the regulation of slaughter-houses and offensive trades, for paving and the regulation of streets and the regulation of common lodging-houses and cellar dwellings, and for providing a supply of water, recreation grounds etc. They were also made surveyors of highways.

They were empowered to make byelaws and to purchase land by agreement, and were invested with rating and borrowing powers to enable them to perform the duties imposed on them by the Act. Provision was also made for the amendment or repeal of local Acts by the Provisional Order constituting a district in which any such Act was in force.

Nuisances  
Removal  
Acts of  
1848 and  
1849.

A permanent Nuisances Removal Act (11 and 12 Vict. c. 123) was also passed in 1848 in lieu of the temporary measure of 1846, and was amended in 1849 by 12 and 13 Vict. c. 111.

Recon-  
struction  
in 1854 of  
the Gene-  
ral Board  
of Health.

In 1854 the General Board of Health was reconstructed and made to consist of a salaried President the Secretaries of State and the President and Vice-President of the Board of Trade, and was continued by successive Acts from year to year down to 1858. The continuing Act of 1855 enabled the Board to appoint a paid medical officer, and Mr. Simon who was appointed by the Board still fills the office under the Local Government Board.

Diseases  
Preven-  
tion Act  
1855,  
18 & 19  
Vict.c.116.

In 1855 the cholera again visited the country with the result of producing fresh legislation in the following year. By the Diseases Prevention Act 1855 the powers contained in previous Acts were extended and placed in a separate Act, the Privy Council being authorized to declare the Act to be in force in any part of England affected by or threatened with any formidable epidemic

<sup>a</sup> Provision was also made for the case of a district formed out of parts of two boroughs: it is believed that no such case has ever occurred.



or contagious disease, and thereupon the General Board of Health were empowered to issue regulations for interment of the dead, house to house visitation, dispensing of medicines and so forth.

The above Act was designed to meet exeptional invasions such as that of cholera, but the law as to the removal of nuisanees and matters injurious to health was also amended by the Nuisanees Removal Act of the same session. This important Act consolidated the Acts of 1848 and 1849, enlarged the definition of nuisances, and dealt with the pollution of streams by gas washings, with the exposure for sale for human food of unsound meat, and with offensive trades. A Nuisanees Removal Committee to be elected by the Vestry superseded the Guardians as the local authority for the execution of the Act in rural districts.

Nuisances  
Removal  
Act 1855,  
18 & 19  
Vict.c.121.

In 1858 the General Board of Health was allowed to expire, and some of its functions (especially that of making regulations for the prevention of epidemic and contagious diseases) were vested in the Privy Council.

Attempts had been made in 1855, 1856, and 1857 to pass Bills consolidating with amendments and additions the Public Health Act 1848. These attempts were unsuccessful, and Mr. Cowper formerly President of the General Board of Health had to be content with passing in 1858 a smaller measure known as the Local Government Act 1858, which was to be construed with and deemed to form part of the Public Health Act 1848.

Local Go-  
vernment  
Act 1858,  
21 & 22  
Vict. c.98.

Changes were made by this Act as to the constitution of Local Boards and their districts. By the expiration of the powers of the General Board of Health the machinery for applying the Act of 1848 was removed, and accordingly the Local Government Act provided that henceforth the Act of 1848 as amended by the Local Government Act should come into force within an area by voluntary *adoption* instead of being *applied* or put in force by a central authority. In municipal boroughs and Improvement Act districts Town Councils and Improvement Commissioners respectively, in other places having defined boundaries the owners and ratepayers, were empowered to adopt the Acts by a resolution duly passed. In the case however of Improvement Commissioners the Acts could only be adopted as a whole if all or some of the Commissioners were elective, though any Commissioners exercising sanitary powers might adopt parts of the Acts. Places not having known and defined boundaries could have their boundaries settled

by the Home Secretary, and thus enable themselves to adopt the Acts. An appeal to the Home Secretary against adoption was given to one-twentieth of the owners and ratepayers of the place, and any owner might appeal against the validity of the proceedings.

The powers of Local Boards with respect to sewerage, scavenging, and the regulation of streets and buildings were considerably enlarged; and numerous provisions of the Towns Police Clauses Act, of the Towns Improvement Clauses Act, and of the Markets and Fairs Clauses Act were incorporated, thus giving the Local Boards the advantage of these provisions without the necessity of obtaining in each case a special Act. Moreover a power to take lands compulsorily, and to obtain the repeal or amendment of local Acts, through the machinery of a Provisional Order made by a Secretary of State and confirmed by Parliament, was for the first time conferred on Local Boards.

Local Government  
Amendment Acts,  
24 & 25  
Vict. c. 61;  
26 & 27  
Vict. c. 17.

The Local Government Amendment Acts of 1861 and 1863 require little notice. The Act of 1861 contained miscellaneous clauses relative to the adoption of the Local Government Acts, to the construction of sewers beyond the district of a Local Board, and to borrowing powers. The Act of 1863 was mainly designed to prevent the adoption by villagers of the Local Government Acts merely for the purpose of escaping inclusion in a Highway district formed under the Highway Act of 1862.

Nuisances  
Removal  
Acts 1860  
and 1863,  
23 & 24  
Vict. c. 77;  
26 & 27  
Vict. c. 117.

Acts to amend the Nuisances Removal Act of 1855 were passed in 1860 and in 1863. The most important provisions of the former are the sections restoring the guardians as the local authority for the execution of the Act in place of the committee appointed by the Vestry under the Act of 1855; and enabling a single inhabitant to complain to justices of a nuisance on private premises: the latter relates exclusively to the seizure and destruction of unsound meat exposed for sale for human food.

Sewage  
Utilization  
Acts, 28 & 29  
Vict. c. 75.

A new and important series of Acts begins with the Sewage Utilization Act of 1865. Hitherto there had been no authority in country places possessing the requisite powers for the execution of sewerage and other structural works. This Act constituted a new authority under the name of the 'sewer authority' in places where the Local Government Acts were not in force. In boroughs the Town Council, in Improvement Act districts the Improvement Commissioners, and in rural districts the Vestry were made

the sewer authority, with powers to construct and maintain sewers, to contract to supply sewage for purposes of utilization, and also to take proceedings to prevent the pollution of streams within its district. Thus (putting out of sight the Nuisances Removal Acts) sanitary legislation was for the first time extended to the rural population.

The Sewage Utilization Act of 1867 gave further powers for dealing with and disposing of sewage, especially by means of sewage farms ; and Local Boards were made sewer authorities for its purposes. 30 & 31 Vict.c.113.

In 1866 an important amending Act (29 and 30 Vict. c. 90) called the Sanitary Act 1866 was passed. The first part amended the Sewage Utilization Act of 1865, enabling Vestries to form special drainage districts, and making better provision for house drainage and supply of water. The second part amended the Nuisances Removal Acts ; it included overcrowding and non-consumption of smoke by factory furnaces and chimneys in the category of nuisances ; facilitated proceedings against nuisances ; and made a variety of provisions as to disinfection and persons suffering from infectious diseases. Part III. was entitled " Miscellaneous," and fully answers that description. The most important of its sections is the 49th, which empowered the Secretary of State on complaint of continued default on the part of a sewer authority local board or nuisance authority to perform their duty, to appoint some person to perform the duty at the expense of the district. Sanitary Act 1866, 29 & 30 Vict. c. 90.

The Sanitary Act 1868 (31 and 32 Vict. c. 115) greatly enlarged the powers of sewer authorities in relation to house drainage privy accommodation and the removal of house refuse. The Sanitary Loans Act 1869 (32 and 33 Vict. c. 100) empowered the Public Works Loan Commissioners to lend money to the Secretary of State to defray expenses incurred by him in the execution of the duty of a defaulting authority, to be charged on the local rate. The Sanitary Act 1870 (33 and 34 Vict. c. 53) provided for the service of notices in special drainage districts. Other Sanitary Acts.

It is convenient to pause here for the purpose of observing that the statutes above enumerated may be divided into three principal groups, known as the Local Government Acts, the Nuisances Removal Acts, and the Sewage Utilization Acts ; it being remembered that in the minor ' Sanitary ' Acts of 1868, 1869, and 1870, General observations on Statutes.

which are classed with the Sewage Utilization Acts, provisions are found belonging equally to the other two groups.<sup>a</sup>

Of these three groups, the Local Government Acts applied to towns or places with a town population, and the Sewage Utilization Acts (speaking roughly) to the country, *i.e.* to places not under the jurisdiction of a Local Board, while the Nuisances Removal Acts applied universally. The Local Government Acts may in effect be considered as the foundation of an urban sanitary code; the Sewage Utilization Acts as the foundation of a rural sanitary code, each set of Acts being supplemented by the Nuisances Removal Acts and other Acts hereafter to be mentioned.

Practically there was now little material difference between the powers of the authorities under the urban and rural sanitary codes in relation to the most important sanitary matters, such as construction of sewers, water supply etc.; inasmuch as the rural code was framed on the principle of conferring on rural authorities such powers of the town authorities as seemed applicable. Moreover in using the terms "urban" and "rural" codes with reference to the two sets of Acts, it must ever be remembered that the Sewage Utilization Act of 1867 was of universal application; and again that in a place like Manchester which never adopted the Local Government Acts, the Town Council was a sewer authority under the Sewage Utilization Acts, as much as a vestry of half a dozen farmers in the smallest of agricultural parishes.

Both sets of Acts as has been observed contained powers for the execution of structural works necessary for sanitary purposes; while the main scope of the Nuisances Removal Acts proper was the abatement of certain mischiefs likely to be injurious to health by including them under a statutory definition as "Nuisances," and providing an efficient summary procedure against them. These statutes prohibited particular acts and sufferances, but (with a single exception) contained no provisions for the execution of structural works for the general benefit of a district. The duty of taking proceedings for the abatement of nuisances may in fact be regarded as the *raison d'être* of the nuisance authorities, but various other duties were from time to time laid on them by the later Acts, especially by the Sanitary Act 1866.

<sup>a</sup> See section 60 of the Public Health Act 1872, and the chronological table of the Sanitary Acts in Appendix IV.



It remains, before proceeding to the legislation of 1872, to notice the numerous miscellaneous statutes bearing more or less on questions affecting public health which are interspersed throughout the period covered by the Acts already discussed.

Miscellaneous Acts.

In 1846 the Baths and Wash-houses Act was passed to encourage and facilitate the establishment of public baths and wash-houses; and was amended by an Act of the following session. These Acts might be adopted in boroughs by the Town Council, in parishes not within any borough by the Vestry : if adopted by the Vestry, commissioners were to be appointed by the Vestry for the execution of the Acts.

Baths and Wash-houses Acts, 9 & 10 Vict. c. 74; 10 & 11 Vict. c. 63.

Provision was made by the Common Lodging-houses Acts of 1851 and 1853 for the registration and inspection and generally for the cleanliness and well ordering of Common Lodging-houses, and for giving notice of cases of infectious disease in such houses, and the removal from them of sick persons to hospital.

Common Lodging-houses Acts, 14 & 15 Vict. c. 28; 16 & 17 Vict. c. 41.

Another Act of 1851 which was amended in 1866 and 1867 enabled urban authorities to provide and maintain suitable dwellings for the labouring classes, and for that purpose to borrow from the Public Works Loan Commissioners, and to make bye-laws for the control and management of the dwellings provided by them.

Labouring Classes' Lodging-houses Acts, 14 & 15 Vict. c. 34; 29 & 30 Vict. c. 28; 30 & 31 Vict. c. 28.

The Adulteration of Food Act of 1860 imposed penalties on the sale of adulterated articles of food and drink, and provided for the appointment of analysts; while the amending Act of 1872 made persons who adulterate articles of food liable to penalties.<sup>a</sup>

Adulteration of Food Acts, 23 & 24 Vict. c. 84; 35 & 36 Vict. c. 74.

In 1863 was passed the Bakehouse Regulation Act which limited the hours of labour in bakehouses of youths under eighteen, and made regulations for the painting and lime-washing and generally for the cleanliness of bakehouses, and also as to sleeping places near bakehouses.

Bake-house Regulation Act, 26 & 27 Vict. c. 40.

The Artizans' and Labourers' Dwellings Act of 1868 enabled local authorities to enforce the taking down or the repair and improvement of premises reported by the medical officer of health to be dangerous to health so as to be unfit for human habitation.

Artizans' and Labourers' Dwellings Act, 31 & 32 Vict. c. 130.

<sup>a</sup> Both these Acts were repealed by the Sale of Food and Drugs Act 1875 (38 and 39 Vict. c. 63), which makes new provisions with respect to adulteration.

Burial  
Acts,  
Factory  
Acts,  
Vaccina-  
tion Acts.

To this list must also be added the Burial Acts, the Factory Acts, and the Vaccination Acts.

The Burial Acts provide for the constitution of Burial Boards and enable them to close old burial grounds and provide new burial grounds.

The Factory Acts contain enactments with respect to cleanliness and ventilation in factories, as well as for the prevention of overcrowding and for limiting the hours of labour of young persons women and children.

The Vaccination Acts which make vaccination of children compulsory were consolidated in 1867.

Review of  
Legisla-  
tion.

Reviewing for a moment the state of Sanitary legislation at the beginning of the session of 1872, we find a list of some twenty Sanitary Acts properly so called supplemented by a number of subsidiary statutes which (exclusive of the Burial Acts, the Factory Acts, and the Vaccination Acts) relate more or less directly to the subject of public health. The fusion and confusion of enactments was ingeniously completed by the introduction every now and then of an isolated amendment of the general Acts into a Bill confirming provisional Orders of the Secretary of State.<sup>a</sup>

Passing to the administration of the law, it will be found that the functions of the central authority were variously and inexplicably distributed between the Privy Council, the branch of the Home Office known as the Local Government Acts Office, and the Poor Law Board.

Local  
Authori-  
ties.

Nor was the state of the local authorities less complex.

The authorities created for the execution of the three groups of Acts already mentioned were in name the following: Local Boards, Nuisance authorities, Sewer authorities. With the exception of the case of an elective Local Board, the above were only nominally created, being in fact existing bodies of men who on their investiture with powers and duties under the Local Government Acts, the Nuisances Removal Acts, and the Sewage Utilization Acts, received nicknames as it were to designate them in their new capacity or capacities. The local authorities for the execution of the other subsidiary Acts acted under their usual designations.

<sup>a</sup> See for examples the definitions of "Highway" and "Year" in sections 13 and 14 of 15 and 16 Vict. c. 42.

This complicated arrangement of authorities, not being part of any scheme of local government, but having grown up as the several statutes were passed, caused great uncertainty and confusion. The Council of a borough for instance might be found acting as a Local Board, as a Sewer authority for certain purposes, as a Nuisance authority, and as the Local authority in the execution of various Acts ; while in country places difficulties were not diminished by the fact that the Sewer authority and the Nuisance authority were different bodies of persons, and their several provinces not too clearly distinguished.

The perplexed state of the law, the supineness of some of the authorities, and the amount of administrative friction led to great complaints ; and to the appointment early in 1869 of a Royal Commission. Sir Charles Adderley was chairman, and the Commission was charged in the most comprehensive terms to enquire into the operation of the Sanitary laws in England and Wales, into the constitution of the various authorities and their administration of the law, and to suggest improvements and amendments. The Commissioners presented in 1871 a most elaborate and exhaustive report, containing in addition to the evidence of the numerous witnesses examined, an historical sketch of sanitary legislation, observations on the existing law, and suggestions in minute detail for its amendment, besides a digested arrangement of the Statutes themselves. A consolidation Bill representing the existing law with certain amendments recommended by the Commissioners was also prepared by Mr. Powell, one of the principal members of the Commission, to whom the Report owed much of its completeness.

Royal  
Commis-  
sion of  
1869.

The recommendations of the Commissioners as to the need of simplifying and strengthening both the central and local authorities, and as to the need of consolidation of the Sanitary statutes, were, with the exception of a partial dissent on the part of Lord Robert Montagu, unanimous.

Legislation followed immediately. The needed reform of the central authority was effected by the Local Government Board Act (34 and 35 Vict. c. 70), introduced by Mr. Stansfeld when President of the Poor Law Board in 1871. That Act abolished the Poor Law Board, established in its place the Local Government Board, and transferred to it all the powers and duties of the Poor Law Board, and all the powers and duties of the Privy Council

Conse-  
quent Le-  
gislation.

Local Go-  
vernment  
Board  
Act 1871.

and Home Office under the Sanitary statutes; thus collecting in one grasp all the scattered threads of central sanitary administration.<sup>a</sup>

Public  
Health  
Act 1872.

In 1872 Mr. Stansfeld (the first President of the Local Government Board) undertook the re-organization of the local authorities. The Public Health Act 1872 (35 and 36 Vict. c. 79) which effected this object contained also miscellaneous amendments of, but did not consolidate, the law.

The effect of the Act was, discarding the principle of adoptive legislation, to map out into districts the whole of England (exclusive of the metropolis), each under one defined authority, and to impose on each authority the task of exercising all powers and duties exercisable within their district under the Sanitary Acts for the time being in force.

On any such division of England into districts for sanitary purposes the difference between the requirements of town and country must (it would seem) be necessarily regarded. Accordingly the Act began by establishing urban and rural sanitary districts.

Urban sanitary districts were Boroughs, Improvement Act districts, and Local Government districts.

The difficulties occasioned by intersecting areas were met as follows. In the case of co-extensive districts the Borough was preferred to the Improvement Act district and the Improvement Act district in its turn to the Local Government district; and the Town Council or Improvement Commissioners as the case might be became the sole sanitary authority. In the case of one district being wholly included in another, the former was to be deemed to be absorbed in the latter. Where part of an Improvement Act district or of a Local Government district was included in a borough, the part included was deemed to be absorbed in the borough, the excluded part remaining subject to the same jurisdiction as if the Act had not passed, unless and until the Local Government Board should by provisional order otherwise direct.

Every urban sanitary authority was invested with all powers and duties previously exercisable by or attaching to a local board, sewer authority, nuisance authority, or local authority under the Sanitary Acts, to the exclusion of the jurisdiction of any other authority, and also with certain new powers and duties conferred or imposed by the Act itself.

Powers  
and duties  
of urban  
sanitary  
authority.

\* This Act will be found in Appendix I.



Following the recommendation of the Sanitary Commission, Boards of Guardians were selected as the rural sanitary authority, and the union as the rural sanitary district, with certain modifications necessitated by the intermixture with or inclusion in the unions of urban sanitary districts. Many of the vestries had probably been unaware of their own existence as sewer authorities, and the importance of the change which constituted one efficient authority and one only for sanitary purposes in rural as well as urban districts cannot be exaggerated.

The same powers and duties were transferred to the rural sanitary authority as to the urban sanitary authority with the exception of the powers and duties of a Local Board under the Local Government Acts, and of the local authority under the Artizans' and Labourers' Dwellings Act, the Baths and Wash-houses Acts, and the Labouring Classes' Lodging-houses Acts.

The appointment of a medical officer of health inspector of nuisances clerk and treasurer was made compulsory on rural as well as urban authorities, but it was provided that the clerk and treasurer of the guardians should be the clerk and treasurer of the rural authority. The necessary provision was also made for a transfer of property and liabilities.

The Act provided that where at the time of its passing the Local Government Acts were in force within an urban sanitary district the expenses of the urban sanitary authority should be defrayed out of the district fund and general district rate leviable under those Acts; if those Acts were not so in force then—

(1) In the case of a Town Council, out of the borough fund.

(2) In the case of Improvement Commissioners, out of their Improvement rate,

subject to one or two exceptions immaterial for the present purpose.

The expenses of a rural sanitary authority were divided into general expenses, comprising the expenses of establishment and officers, of disinfection, and all other expenses not declared by the Act itself or by order of the Local Government Board to be special expenses; and special expenses, comprising the expenses of sewers and water supply, and other expenses incurred for some particular place, and declared by order of the Local Government Board to be special expenses. General expenses were made payable out of a common fund to be raised out of the poor rate of the parishes of the district: special expenses were made a separate charge on each

Rural  
sanitary  
authori-  
ties.

Powers  
and duties  
of rural  
sanitary  
authority.

Expenses  
of urban  
sanitary  
authority.

contributory place. The rural authority were empowered to send precepts to the overseers of the parishes from which contributions are required, specifying the amount required for general and special expenses respectively; and the overseers are to pay the amount required for general expenses out of the poor rate, and to raise the amount required for special expenses by levying a separate rate in the nature of a poor rate but with an exemption of three-fourths in the case of agricultural land canals railways etc. Provision is made for recouping the poor rate where the contributory place is part only of a parish.

Port  
sanitary  
authori-  
ties.

In order to guard more effectually against the importation and spread of infectious diseases the Local Government Board were empowered to constitute sanitary authorities of ports either by making one riparian authority the sanitary authority for the whole port, or by uniting two or more riparian authorities. Important powers for the alteration of areas and local authorities were also conferred on the Local Government Board; and an elaborate set of clauses introduced for the union of districts, so as to enable them to join in executing any works for their common benefit. The recommendation of the Sanitary Commission that the Local Government Board should be enabled on the application of any sanitary authority to repeal or amend any local Acts (other than Acts for the conservancy of rivers) in force within their district, was also carried into effect.

The borrowing powers of sanitary authorities were extended, and they were enabled to borrow money from the Public Works Loan Commissioners at a low rate of interest.

Summary  
of legisla-  
tion down  
to 1875.

Thus the needed administrative reform was accomplished. The law however to be administered remained as perplexed as ever; and in 1874 the Sanitary Law Amendment Act (37 and 38 Vict. c. 89) containing a variety of miscellaneous amendments was added to the pile of statutes.

In the following session Mr. Selater Booth, who on the change of Government in 1874 had become President of the Local Government Board, determined to undertake the work remaining undone, and to introduce a Bill for the consolidation and simplification of the Sanitary Acts.

To carry a consolidation Bill, aspiring at the same time to introduce any considerable alteration in the law, would have been an impossibility. A consolidation Bill of any magnitude can only

be carried by the forbearance of members relying on the assurance of the minister that the Bill is really what it professes to be. Accordingly Mr. Selater Booth's Bill, though it aimed at clearing up doubts and difficulties in the existing Acts, and at remedying such defects in their working machinery as were suggested by experience, did not admit (with very few exceptions) what may be called controversial amendments.

## CHAPTER II.

## THE PUBLIC HEALTH ACT 1875.

THIS chapter will shortly explain the scheme and provisions of the Act of 1875, pointing out at the same time the more important amendments of existing law which have been introduced. The Act is divided into eleven parts, and these divisions it will be convenient to follow.<sup>a</sup>

Part I.  
Preliminary.

Part I. is headed Preliminary, and besides the ordinary clauses as to short title and extent of Act, contains definitions extracted for the most part from the Public Health Act 1848 and the Public Health Act 1872.

The term "local authority" is employed as the most convenient common term for urban authorities and rural authorities.

Part II.  
Authorities for  
execution  
of Act.

Part II. is a re-enactment of the legislation of 1872 as to the constitution of districts and authorities for sanitary purposes.

It has been observed that under the Act of 1872, Town Councils, Improvement Commissioners, and Local Boards became the urban sanitary authorities in Boroughs, Improvement Act districts, and Local Government districts respectively; while Boards of Guardians became the rural sanitary authorities in those unions and parts of unions which were not included in any urban district. Of the above authorities Local Boards alone owe their existence as well as their powers and duties to the Sanitary Acts; <sup>b</sup> the other bodies are creations of charters or independent statutes, though clothed

<sup>a</sup> The Index under such headings as "Sewer" "Water Supply" etc. will be found to contain a digest of the law which renders minute detail in this chapter unnecessary. See also the notes to the various sections of the Act.

<sup>b</sup> This expression is henceforth used to include the Acts defined by section 4 of the new Act as the Sanitary Acts. The definition is the same as that contained in section 60 of the Public Health Act 1872, with the addition of the Sanitary Law Amendment Act 1874.

by the Sanitary Acts with powers and duties for sanitary purposes. Re-enactment then of the provisions of the Act of 1872 was not, as to these latter authorities and their districts, absolutely necessary, and a saving clause might probably have been relied on to keep up the existing state of things. Such a course however would have been highly inconvenient, since it would have compelled resort to a repealed Act in order to ascertain the constitution of the bodies charged with sanitary administration : and in any event the Local Boards would have required fresh provisions. This part of the Act therefore re-enacts the sections of the Act of 1872 which declare the division of England into sanitary districts and settle the authorities having jurisdiction therein, and provides in addition for the due election of members of the Local Boards, by the machinery contained in Schedule IV. A few exceptional cases which had arisen under the Act of 1872 are met by the insertion of words in section 9 to the effect that where the number of elective guardians qualified to act as members of the rural authority would be less than five, the Local Government Board may make up that number by nominees from persons qualified to be elected as guardians of the union.

The authorities actually exercising sanitary powers and duties at the passing of the Act are dealt with by a provision among the saving clauses (s. 326). This section enacts that Local Government districts constituted in pursuance of the Sanitary Acts shall be deemed to be districts under the new Act, that all sanitary authorities charged at the time of the passing of the new Act with the execution of the Sanitary Acts shall be deemed to be authorities charged with the execution of the new Act, their members in each case holding office so long as they would have done if the new Act had not passed, and that their officers and servants shall continue similarly in their offices and employments. In short, existing districts and authorities remain unaltered ; but each authority is clothed, in lieu of its old powers and duties under the repealed provisions of the Sanitary Acts, with the powers and duties of the new Act, while its members and officers become instruments for the execution of the latter instead of the former.

With regard to the property of the existing authorities, section 12 declares that all property vested in any authority for the purposes of the Sanitary Acts shall continue vested or vest in them for the purposes of the new Act.



Neither under the Public Health Act 1872 nor under the new Act is any fresh corporate title conferred on sanitary authorities, but each authority should act under their ordinary corporate name as town council or as the case may be ; with the addition in notices and other documents of "being the urban [*or* rural] sanitary authority under the Public Health Act 1875," or words to that effect.

Part III.  
Sanitary  
provi-  
sions.—  
Sewerage  
and drain-  
age.

Part III. contains what are termed generically Sanitary Provisions, and commences with the law relating to sewerage and drainage. This embraces the powers of local authorities to make and maintain sewers, and to utilize or otherwise dispose of sewage ; their duty to keep sewers properly cleansed ; their power to enforce adequate house drainage ; and regulations as to the connection of house drains with sewers by owners and occupiers.

s. 17. It is to be observed that the Act does not authorize the making or use of sewers so as to discharge unpurified sewage into any stream canal or lake.

ss. 27-32. For the purpose of disposing of sewage the local authority are practically at liberty to adopt almost any conceivable scheme, whether of filtration deodorization or utilization by means of a sewage farm or otherwise, and either to execute it themselves or to contract for its execution, and to become shareholders in any company with which they may contract. Additions to the existing law in sections 23 and 24 are explained in the notes to those sections.

ss. 32-34. Special restrictions for the protection of private property are imposed by sections 32-34 on the local authority with regard to the execution of sewage works without their district, an appeal to the Local Government Board being secured to persons who would be affected by any such intended work.

Privies,  
water-  
closets, &c.  
ss. 35-41. Provisions for securing proper privy accommodation, and for the removal of refuse from premises, and for the scavenging of streets, follow, involving no alteration of the law save the extension of the provisions of a couple of sections (38 and 46) to rural districts.

It is illegal to build or rebuild a house without a sufficient water-closet earthcloset or privy ; and the local authority may require the owner or occupier of any house which appears by the report of their surveyor or inspector of nuisances to be without a sufficient watercloset or its equivalent to provide the same.

If a drain or watercloset etc. is complained of as being a

nuisance, the surveyor or inspector of nuisances may by written order of the local authority enter and examine the same and take any steps that may be necessary to remedy the cause of complaint (s. 41).

The enactments relating to scavenging and cleansing and to the power of making byelaws as to the removal of house refuse manure and other matters vary somewhat in the case of urban and rural authorities: the distinctive urban powers will be found in sections 42, 44, 45, 47, 49, and 50.

Scaven-  
ging and  
cleansing.  
ss. 42-50.

The sections as to water supply complete the series of enactments relating to ordinary structural works. The large general powers given by the Sanitary Acts to local authorities to supply their districts or any part thereof with water remain substantially unaltered; but additional facilities have been given to local authorities who themselves undertake to supply water, by giving them the same powers for carrying mains outside their districts as they have for carrying sewers; and by the incorporation of certain provisions of the Waterworks Clauses Acts. Moreover, local authorities are empowered to supply water to houses by measure; and with the sanction of the Local Government Board to supply water to the authorities of adjoining districts. A new section (s. 53) providing for the more secure construction of reservoirs was introduced in the House of Lords: and some addition has been made to section 70 which provides for the closing of polluted wells etc.

Water  
supply.  
ss. 51-70.

The law prohibiting cellar dwellings remains untouched, and is followed by a consolidation of the Common Lodging-houses Acts of 1851 and 1853, which impinged on similar provisions in the Public Health Act 1848. Under these enactments local authorities have considerable powers of inspection and of making byelaws for securing the cleanliness ventilation and well ordering of common lodging-houses.

Regula-  
tion of  
cellar  
dwellings  
and  
lodging-  
houses.  
ss. 71-90.

The important sub-division of the Act contained under the heading "Nuisances" embodies the main provisions of the Nuisances Removal Acts. The law making a catalogue of "nuisances," and then providing a summary method of procedure against the persons causing them, is not departed from,<sup>a</sup> but one or two alterations and additions may be noticed.

Nuisances.  
ss. 91-111.

Overcrowding a house so as to be injurious to the health of the inmates is expressly made a nuisance, though the inmates be all

<sup>a</sup> See note before section 91.

members of the same family. Some doubt had existed as to the precise state of the law on this point, but while the Bill was passing through Parliament, the Court of Queen's Bench decided in the case of *Guardians of the Rye Union v. Paine*, 39 J. P. 575, that overcrowding by members of one family was a nuisance under the Sanitary Act 1866.

The probably unintentional exemption from all the provisions as to nuisances (by a somewhat doubtful interpretation of the Nuisances Removal Act of 1855 and the Sanitary Act 1866) of manufactories of the produce of ores and minerals is withdrawn.<sup>a</sup>

Local authorities are empowered to take summary or other proceedings at law or in equity against persons causing any nuisance within their district under the Act, though the act or default causing the nuisance may be committed or take place wholly or partially without their district (s. 108). It is to be remarked that this section extends to the Metropolis so as to allow nuisance authorities within the Metropolis to proceed under it in respect of a nuisance within their district caused by an act or default committed or taking place within the district of a local authority under the Act : and similarly a local authority may proceed in respect of a nuisance within their district caused by an act or default committed or taking place within the district of any such nuisance authority.

In section 255, under the heading "Legal Proceedings," an attempt has been made to meet the existing difficulty of proceedings where a nuisance appears to be caused by the acts or defaults of a number of persons, by enacting that proceedings may be taken and an order made against any one or more of such persons, though the acts or defaults of any one of such persons would not separately have caused a nuisance. This is an extension of sections 33 and 34 of the Nuisances Removal Act of 1855.

In the case of certain offensive trades which are the subject of special regulation, an important change is made by the omission of the provision in section 28 of the last-mentioned Act, enabling an offender to withdraw the case from the cognizance of the justices and force the complainant before a superior court. Power is given to proceed against a nuisance arising from an offensive trade, though the place where the offensive trade is carried on may be situated without the district in which the

Offensive  
trades,  
ss. 112-15.

<sup>a</sup> See section 334 and note.

nuisance is complained of (s. 115) : and the observations above on section 108 relating to the Metropolis apply also to this section.

The remaining sections of Part III. relate to the seizure of unsound meat, etc., which may be carried before a magistrate and by his order be destroyed (ss. 116-19) ; to precautions against the spread of infectious diseases, and the provision of means of disinfection ; and to the provision of hospitals and mortuaries, and to the prevention of epidemic diseases. In consolidating the Diseases Prevention Act of 1855, which deals with the last-mentioned subject, the cumbrous plan of the Local Government Board declaring by order the provisions of the Act to be in force has been abandoned. The Local Government Board are now enabled to compel the provision of a mortuary in any sanitary district.

Unsound  
meat, etc.  
ss. 116-19.

Infectious  
diseases  
and hos-  
pitals, etc.  
ss. 120-43.

The "Local Government Provisions" embodied in Part IV. are taken almost exclusively from the Local Government Act 1858. This part does not apply to rural districts, but places the control of highways in the hands of urban authorities, with extensive powers for the regulation of streets and buildings and of lighting the streets. Urban authorities are also empowered to provide public pleasure grounds and to make byclaws for their regulation, and to provide markets, slaughter-houses, and public clocks. Moreover numerous provisions of the Towns Improvement Clauses Act, of the Markets and Fairs Clauses Act, and of the Towns Police Clauses Act are incorporated.<sup>a</sup>

Part. V.  
Local Go-  
vernment  
Provi-  
sions.  
ss. 144-72.

Without a local Act an urban authority could only contract under 12 and 13 Vict. c. 94 for lighting their district for a period not exceeding three years. This restriction has been removed ; and urban authorities are enabled, where there is no company or person supplying gas in the district or any part thereof, to obtain from the Local Government Board a provisional order for the construction and maintenance of gas-works, under the Gas and Waterworks Facilities Act 1870.<sup>b</sup> An urban authority may also (with the sanction of the Local Government Board) purchase the undertaking of any gas company.

<sup>a</sup> These incorporated provisions are printed below at the end of the Public Health Act.

<sup>b</sup> 33 & 34 Vict. c. 70. The Board of Trade, in a report on the working of the Act issued in December 1873, observed that there seemed no reason why local authorities should not have the same facilities under this Act as companies.



Part V.  
General  
Pro-  
visions.  
ss. 173-206.

Part V. comprises General Provisions as to Contracts by local authorities, Purchase of lands, Arbitration, Byelaws, Officers and conduct of business of local authorities.

Section 174 contains the regulations to be observed in relation to the contracts of urban authorities: no special provision is made by the Act for the contracts of rural authorities.

Ample powers are given for the acquisition of land by local authorities for any purpose of the Act; but the compulsory powers of the Lands Clauses Acts cannot be put in force without a provisional order of the Local Government Board.

The remaining provisions of this part do not demand any special notice here; and the few alterations made in the law are such as are best explained in the notes to the Act.

Part VI.  
Rating  
Powers,  
etc.  
ss. 207-28.

Nor in Part VI., relating to Rating and Borrowing powers and Audit, is there any substantial alteration of the law. The scheme with respect to urban authorities is to charge the expenses incurred by them in the execution of the Act on general district rates to be levied under the Act, subject to the exception of certain cases in which at the passing of the Act the sanitary expenses of certain town councils and improvement commissioners were defrayed out of the borough rate or an improvement rate or partly out of the borough rate and partly out of an improvement rate. In these cases the expenses of the execution of the new Act will be defrayed out of the same fund or rate as the sanitary expenses were defrayed out of at the passing of the Act. It must be added however that in the particular cases enumerated in section 216 the expenses of repair of highways will be defrayed out of a highway rate levied by the urban authority under the Highway Acts, as surveyors of highways within their district.

ss. 229-32.

The legislation of 1872 with respect to the expenses of rural authorities which is re-enacted in sections 229-32 has been already explained.<sup>a</sup>

Private improvement rates may be made and levied by either urban or rural authorities whenever they have incurred expenses in the execution of works of private improvement authorized by the Act, on the default of the owner or occupier to do what was required.

<sup>a</sup> *Supra*, p. 13.



Borrowing on the credit of the rates is authorized for the purpose of defraying any expenses incurred in the execution of the Act, but requires the sanction of the Local Government Board and is subject to the regulations laid down by section 234. The Public Works Loan Commissioners are empowered to lend according to their ordinary practice to local authorities; and also, on the recommendation of the Local Government Board, to lend to them on exceptionally favourable terms. Re-borrowing is also allowed subject to certain restrictions.

Borrowing.  
ss. 233-44.

With regard to Audit, it need only be remarked here that the accounts of all Improvement Commissioners under the Act are to be audited in the same way as the accounts of Local Boards. This provision is new, but is in conformity with recent decisions of the Court of Queen's Bench.

Audit.  
ss. 245-50.

Under the heading "Legal Proceedings" (Part VII.) are found provisions for the summary prosecution of offences and recovery of penalties and rates; as to notices; and as to appeal from the decision of the local authority in certain cases to the Local Government Board, and generally from the court of summary jurisdiction and from rates, to quarter sessions. An expansion of sections 33 and 34 of the Nuisances Removal Act 1855 relating to proceedings against what may be called a contributory nuisance has been already pointed out.<sup>a</sup> Section 260 providing that in ordinary cases the corporate name of the local authority need not be proved will tend to obviate technical objections and to diminish expense. The limit of county court jurisdiction under the Act has been enlarged from £20 to £50. In the section giving an appeal in certain cases from the decision of the local authority to the Local Government Board, the decision of the Board is made binding on both parties: section 120 of the Public Health Act 1848 only made the decision binding on the local authority.

Part VII.  
Legal Pro-  
ceedings.  
ss. 251-69.

Part VIII., relating to Alteration of areas and Union of districts, is for the most part a re-enactment of provisions contained in the Act of 1872. Section 272 represents the old power to adopt the Local Government Acts by a resolution of owners and ratepayers of any place having a known and defined boundary, and enables

Part VIII.  
Alteration  
of Areas,  
etc.  
ss. 270-86.

<sup>a</sup> *Supra*, p. 20.

owners and ratepayers of any such place, in pursuance of a resolution duly passed, to obtain an order of the Local Government Board constituting it a Local Government district.

Under section 276 a rural authority may by an order of the Local Government Board be invested with any urban powers either for the whole or any part of their district without any alteration either of their constitution or the limits of their district. It is probable that this enactment will supersede in some instances the necessity or alleged necessity of setting up small local boards with an inconveniently small area of jurisdiction.

ss. 287-91. The provisions of the Act of 1872 for the constitution of port sanitary authorities are completed by providing for the combination of two or more riparian authorities, and for the establishment of a joint board out of *representatives* of several riparian authorities as the authority for the whole port, also by providing for the constitution of a port authority for several ports consisting of members of the several riparian authorities having jurisdiction in such ports.

A power to combine rural districts and small urban districts for the purpose of a joint appointment of a medical officer of health on a representation to the Local Government Board that such an appointment would diminish expense or otherwise be for the advantage of the districts, has also been introduced. (s. 286.)

Part IX.  
Local Government  
Board.  
ss. 293-304

Part IX. (Local Government Board) contains administrative provisions as to inquiries by inspectors of the Board, the making of provisional orders, and the power of the Board to enforce the performance of duty by a defaulting local authority on complaint made to the Board of the default ; also section 33 of the Act of 1872, enabling the Board on application from local authorities to alter by provisional order local Acts, other than Acts relating to the conservancy of rivers.

Part X.  
Miscellaneous and  
Temporary Pro-  
visions.  
ss. 305-25.

In Part X. (Miscellaneous and Temporary Provisions) are found, among others, sections facilitating the execution of the Act ; a provision for compensation to persons sustaining damage by reason of the exercise of the powers conferred by the Act ; a power for a local board, with the sanction of the Local Government Board, to change their name ; and a section substituting in other Acts

and documents the provisions of the new Act for the provisions of those Acts which it repeals. The Temporary provisions do not require notice here.

Of the Saving clauses in Part XI. it may be said generally that all the savings in the former statutes (with the exception already mentioned in the case of manufactories of the produce of ores and minerals) are retained ; moreover it is declared that nothing in the Act shall affect the composition or the number and qualification of members of local boards constituted under the Public Health Act 1848, before the passing of the Local Government Act 1858.

Part XI.  
Saving  
Clauses  
and  
Repeal.  
ss. 326-42.

The object and effect of the provision as to the authorities existing at the passing of the Act, and their officers, etc., has been already explained.<sup>a</sup>

A total and unqualified repeal of all the enactments consolidated in this Act appeared impracticable. Repeal.

Many of them are in force in the Metropolis ; some in Scotland and Ireland. No attempt then is made to interfere with them otherwise than as they affect the scope of the Act, or (in other words) England exclusive of the Metropolis ; and they are left standing so far as regards the Metropolis and Scotland and Ireland respectively. A few other enactments which would properly find a place in the consolidation of another class of Acts than those comprised in this Act (such, *e.g.*, as the transfer of certain powers and duties of the Home Secretary to the Local Government Board, contained in the Act of 1872) are re-enacted (with the modifications necessary to bring them into conformity with the Bill) in a separate part of Schedule V. The result is, that so far as regards England (exclusive of the Metropolis), nineteen statutes are wholly repealed.<sup>b</sup>

The five schedules appended to the Act contain all matters of mere procedure, forms for the execution of the Act, a list of Acts repealed and of certain sections which are re-enacted. Schedules.

Schedule I. contains rules for the meetings and proceedings of Local Boards, and of committees of local authorities (other than Town Councils), and of Joint Boards.

<sup>a</sup> *Supra*, p. 17.

<sup>b</sup> See Table of Acts, in Appendix IV.

In Schedule II. are found the lengthy rules laid down by the Public Health Act 1848 for the election of Local Boards, with the following alterations and additions. The members of Local Boards will henceforth come into office on the 15th of April in each year; and it will be the duty of the chairman as returning officer to make all his arrangements for the completion of the election in good time accordingly. Provision is made for the keeping and revision by the chairman of the local board of a register of owners and proxies entitled to vote at elections, and an owner or proxy will not (except in the case of the first election) be entitled to have a voting-paper delivered to him unless his name is on the register for the time being in force. Partners in firms consisting of not more than six persons may vote as owners individually in respect of partnership property as if the property were equally divided among them: a firm of seven members and upwards is treated as being in the nature of a company and must appoint a proxy.

This schedule also lays down rules for the proceedings in case of the lapse of a Local Board. A receiver of the rates leviable under the Act may be appointed for the protection of creditors; while, if the owners and ratepayers fail within three months from the date of the lapse of the board to elect a new board, the Local Government Board may dissolve the district and merge it in a rural district.

Schedule III. prescribes the mode of passing of a resolution by owners and ratepayers, *e.g.*, for the establishment of a market under section 166.

Schedule IV. contains forms which may be employed in the execution of the Act, but are not obligatory.

Schedule V. contains in Parts I. and II. a list of the Acts and parts of Acts repealed, and in Part III. a list of the sections alluded to above which are re-enacted.



THE PUBLIC HEALTH ACT 1875.



# THE PUBLIC HEALTH ACT 1875.

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## ANALYSIS OF ARRANGEMENT OF CLAUSES.

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## *Public Health and Local Government Acts.*

P. H.	11 & 12 Vict. c. 63.	Public Health Act, 1848.
L. G.	21 & 22 Vict. c. 98.	Local Government Act, 1858.
L. G. Am.	24 & 25 Vict. c. 61.	Local Government Act (1858) Amendment [Act, 1861.
P.H. 1872	35 & 36 Vict. c. 79.	Public Health Act, 1872 (b).
P.H. 1874	37 & 38 Vict. c. 89.	Sanitary Law Amendment Act, 1874.

## *Nuisances Removal Acts.*

N.R. 1855	18 & 19 Vict. c. 121.	Nuisances Removal Act, 1855.
N.R. 1860	23 & 24 Vict. c. 77.	„ „ 1860.
N.R. 1863	26 & 27 Vict. c. 117.	„ „ 1863.

## *Sewage Utilization and Sanitary Amendment Acts.*

S. U. 1865	28 & 29 Vict. c. 75.	Sewage Utilization Act, 1865.
S. U. 1867	30 & 31 Vict. c. 113.	„ „ 1867.
San. 1866	29 & 30 Vict. c. 90.	Sanitary Act, 1866 (b).
San. 1868	31 & 32 Vict. c. 115.	„ 1868.
San. 1869	32 & 33 Vict. c. 100.	Sanitary Loans Act, 1869.
San. 1870	33 & 34 Vict. c. 53.	Sanitary Act, 1870.

## *Other Acts.*

C.L. 1851	14 & 15 Vict. c. 28.	Common Lodging Houses Act, 1851.
C.L. 1853	16 & 17 Vict. c. 41.	„ „ 1853.
D.	18 & 19 Vict. c. 116.	Discases Prevention Act, 1855.
T. I.	10 & 11 Vict. c. 34.	Towns Improvement Clauses Act, 1847.
T. P.	10 & 11 Vict. c. 89.	Towns Police Clauses Act, 1847.

(a) See Table of Acts in Appendix IV.

(b) Part II. of this Act amended in important particulars the Nuisances Removal Acts.

# THE PUBLIC HEALTH ACT 1875.

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## An Act

FOR CONSOLIDATING AND AMENDING THE ACTS RELATING  
TO PUBLIC HEALTH IN ENGLAND.

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

### PART I.

#### *Preliminary.*

- |  |                             |
|--|-----------------------------|
| I. This Act may be cited as The Public Health Act 1875.  | Short title.                |
| II. This Act shall not extend to Scotland or Ireland, nor (save as by this Act is expressly provided) to the Metropolis. | Extent of Act.              |
| III. This Act is divided into parts, as follows :  | Division of Act into parts. |
| Part I.—Preliminary.   |                             |
| Part II.—Authorities for Execution of Act.   |                             |
| Part III.—Sanitary Provisions.   |                             |
| Part IV.—Local Government Provisions.  |                             |
| Part V.—General Provisions.  |                             |
| Part VI.—Rating and Borrowing Powers, etc.   |                             |
| Part VII.—Legal Proceedings.   |                             |
| Part VIII.—Alteration of Areas and Union of Districts.   |                             |
| Part IX.—Local Government Board.   |                             |
| Part X.—Miscellaneous and Temporary Provisions.  |                             |
| Part XI.—Saving Clauses and Repeal of Acts.  |                             |



## Definitions.

IV. In this Act, if not inconsistent with the context, the following words and expressions have the meanings herein-after respectively assigned to them ; that is to say,—

“Borough” means any place for the time being subject to the Act of the session of the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intituled “An Act to Provide for the Regulation of Municipal Corporations in England and Wales,” and any Act amending the same :

“The Metropolis” means the city of London and all parishes and places mentioned in schedules A, B, and C to the Metropolis Management Act 1855 :

“Local Government district” means any area subject to the jurisdiction of a local board constituted in pursuance of the Local Government Acts before the passing of this Act, or in pursuance of this Act ; and “local board” means any board so constituted :

“The Local Government Acts” are defined in schedule V. They are repealed by this Act.

“Improvement Act district” means any area for the time being subject to the jurisdiction of any improvement commissioners as herein-after defined :

“Improvement Commissioners” means any commissioners trustees or other persons invested by any local Act with powers of town government and rating :

“Parish” means a place for which a separate poor rate is or can be made, or for which a separate overseer is or can be appointed :

“Union” means a union of parishes incorporated or united for the relief or maintenance of the poor under any public or local Act of Parliament, and includes any parish subject to the jurisdiction of a separate board of guardians :

“Guardians” means any persons or body of persons by whom the relief of the poor is administered in any union :

“Person” includes any body of persons, whether corporate or unincorporate :

“Local authority” means urban sanitary authority and rural sanitary authority :

“Surveyor” includes any person appointed by a rural authority to perform any of the duties of surveyor under this Act :

“Lands” and “Premises” include messuages buildings lands easements and hereditaments of any tenure :

A right of free fishery being an incorporeal hereditament was held to be within this definition of lands. *Oldaker v. Hunt*, 6 De G. M. and G. 376. It should be noticed that the definition includes easements.

“Owner” means the person for the time being receiving the rackrent of the lands or premises in connexion with which the word is used, whether on his own account or as agent or trustee for any other person, or who would so receive the same if such lands or premises were let at a rackrent :

The definition of owner for the purpose of election of members of local boards is somewhat different. Sched. II. rule 10.

“Rackrent” means rent which is not less than two-thirds or the full net annual value of the property out of which the rent arises ; and the full net annual value shall be taken to be the rent at which the property might reasonably be expected to let from year to year, free from all usual tenant’s rates and taxes, and tithe commutation rentcharge (if any), and deducting therefrom the probable average annual cost of the repairs, insurance, and other expenses (if any) necessary to maintain the same in a state to command such rent :

“Street” includes any highway (not being a turnpike road), and any public bridge (not being a county bridge), and any road lane footway square court alley or passage whether a thoroughfare or not :

“House” includes schools, also factories and other buildings in which more than twenty persons are employed at one time :

“Drain” means any drain of and used for the drainage of one building only, or premises within the same curtilage, and made merely for the purpose of communicating therefrom with a cesspool or other like receptacle for drainage, or with a sewer into which the drainage of two or more buildings or premises occupied by different persons is conveyed :

“Sewer” includes sewers and drains of every description, except drains to which the word “drain” interpreted as aforesaid applies, and except drains vested in or under the control of any authority having the management of roads and not being a local authority under this Act :

This latter exception is introduced to prevent highway drains for surface water in rural districts vesting in the rural sanitary authority under section 13.

For definition of earth-closet, see section 37.

“Slaughter-house” includes the buildings and places commonly called slaughter-houses and knackers’ yards, and any building or place used for slaughtering cattle horses or animals of any description for sale :

“Water company” means any person or body of persons corporate or unincorporate supplying or who may hereafter supply water for his or their own profit :

“Waterworks” includes streams springs wells pumps reservoirs cisterns tanks aqueducts cuts sluices mains pipes culverts engines and all machinery lands buildings and things for supplying or used for supplying water, also the stock in trade of any water company :

“Bakery Regulation Act” means 26 & 27 Vict. c. 40. (Bakery Regulation Act, 1863) :

“Artizans’ and Labourers’ Dwellings Act” means 31 & 32 Vict. c. 130. (Artizans’ and Labourers’ Dwellings Act, 1868) :

“Baths and Wash-houses Acts” means 9 & 10 Vict. c. 74. (An Act to encourage the establishment of Public Baths and Wash-houses) ; 10 & 11 Vict. c. 61. (An Act to amend the Act for the establishment of Public Baths and Wash-houses) :

“Labouring Classes’ Lodging Houses Acts” means 14 & 15 Vict. c. 34. (Labouring Classes’ Lodging Houses Act, 1851) ; 29 & 30 Vict. c. 28. (Labouring Classes’ Dwelling Houses Act, 1866) ; 30 & 31 Vict. c. 28. (Labouring Classes’ Dwelling Houses Act, 1867) :

“Sanitary Acts” means all the above-mentioned Acts and the Acts mentioned in Part I. of Schedule V. to this Act.

This definition of the Sanitary Acts corresponds with the definition in the Public Health Act 1872 : it is required in this Act for purposes of reference to the former law.

“Sanitary purposes” means any object or purposes of the Sanitary Acts.

“Court of quarter sessions” means the court of general or quarter sessions of the peace having jurisdiction over the whole or any part of the district or place in which the matter requiring the cognizance of general or quarter sessions arises :

“Court of summary jurisdiction” means any justice or

justices of the peace stipendiary or other magistrate or officer, by whatever name called, to whom jurisdiction is given by the Summary Jurisdiction Acts or any Acts therein referred to :

“Summary Jurisdiction Acts” means the Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-three, intituled “An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders,” and any Act amending the same.

## PART II.

### AUTHORITIES FOR EXECUTION OF ACT.

#### CONSTITUTION OF DISTRICTS AND AUTHORITIES.

See Introduction p. 16 for explanation of the sections of the Public Health Act 1872 which are re-enacted in this part.

As to the alteration of areas and union of districts, see Part VIII. *infra*.

V. For the purposes of this Act England, except the Metropolis, shall consist of districts to be called respectively—

(1.) Urban sanitary districts, and

(2.) Rural sanitary districts,

(in this Act referred to as urban and rural districts); and such urban and rural districts shall respectively be subject to the jurisdiction of local authorities, called urban sanitary authorities and rural sanitary authorities (in this Act referred to as urban and rural authorities), invested with the powers in this Act mentioned.

For the powers of the local authorities, see sections 10, 11.

VI. Urban districts shall consist of the places in that behalf mentioned in the first column of the table in this section contained, and urban authorities shall be the several bodies of persons specified in the second column of the said table in relation to the said places respectively.

Urban  
and rural  
sanitary  
districts.  
P.H. 187  
s. 3.

Descrip-  
tion of  
urban dis-  
tricts and  
urban au-  
thorities.  
P.H. 1872,  
ss. 3, 4.  
P.H., s. 33.  
L.G., s. 26.



URBAN DISTRICT.	URBAN AUTHORITY.
Borough constituted such either before or after the passing of this Act.	The Mayor, Aldermen, and Burgesses acting by the Council.
Improvement Act district constituted such before the passing of this Act, and having no part of its area situated within a borough or local government district.	The Improvement Commissioners.
Local Government district constituted such either before or after the passing of this Act, having no part of its area situated within a borough, and not coincident in area with a borough or Improvement Act district.	The Local Board.

Provided that—

- (1.) Any borough, the whole of which is included in and forms part of a Local Government district or Improvement Act district, and any Improvement Act district which is included in and forms part of a Local Government district, and any Local Government district which is included in and forms part of an Improvement Act district, shall for the purposes of this Act be deemed to be absorbed in the larger district in which it is included, or of which it forms part; and the improvement commissioners or local board, as the case may be, of such larger district, shall be the urban authority therein; and
- (2.) Where an Improvement Act district is coincident in area with a Local Government district, the improvement commissioners, and not a local board, shall be the urban authority therein; and
- (3.) Where any part of an Improvement Act district is situated within a borough or Local Government district, or where any part of a Local Government district is situated within a borough, the remaining part of such Improvement Act district or of such Local Government district so partly situated within a borough shall for the purposes of this Act continue subject to the like jurisdiction as it would have been subject to if this Act had not been passed, unless and until the Local Government Board by provisional order otherwise directs.



For the purposes of this Act, the boroughs of Oxford, Cambridge, Blandford, Calne, Wenlock, Folkestone, and Newport Isle of Wight, shall not be deemed to be boroughs, and the borough of Cambridge shall be deemed to be an Improvement Act district, and the borough of Oxford to be included in the Local Government district of Oxford. So much of the borough of Folkestone as is not included within the Local Government district of Sandgate shall be an urban district, and shall be under the jurisdiction, for the purposes of this Act, of the authority for executing "The Folkestone Improvement Act 1855."

As to Oxford, section 342.

VII. Every local board, and any improvement commissioners being an urban authority and not otherwise incorporated, shall continue to be or be a body corporate, designated (in the case of local boards and improvement commissioners being urban sanitary authorities at the time of the passing of this Act) by such name as they then bear, and (in the case of local boards constituted after the passing of this Act) by such name as they may with the sanction of the Local Government Board adopt; with a perpetual succession and a common seal, and with power to sue and be sued in such name, and to hold lands without any license in mortmain for the purposes of this Act.

Incorporation of local boards and improvement commissioners. San. 1866, s. 46. P.H. s. 35.

The distinction between corporate and non-corporate districts which was contained in the Public Health Act 1848 no longer exists. It was formerly requisite in the non-corporate districts (*i.e.* where the powers of a local board were not exercised by a town council) that formal documents issued by the local board should be signed by five members as well as sealed. In future it will be sufficient if they are issued under the common seal.

VIII. The members of local boards shall be elective; and the number and qualification of members of local boards, the qualification of electors, the mode and expenses of election, and the proceedings incident thereto, the retirement and disqualification of members, the proceedings in case of lapse of the local board, and all other matters relating to the election of members of local boards, shall be governed by the rules contained in schedule II. to this Act.

Election of local boards. P.H., s. 13. L.G., s. 24 etc.

See the notes on these rules, *infra*.

IX. The area of any union which is not coincident in area with an urban district nor wholly included in an urban district (in this section called a rural union), with the exception of those portions

Description of rural districts and

rural au- (if any) of the area which are included in any urban district, shall  
 thorities. be a rural district, and the guardians of the union shall form the  
 P.H. 1872, rural authority of such district : Provided that—  
 s. 5.

- (1.) An ex-officio guardian resident in any parish or part of a parish belonging to such union, which parish or part of a parish forms or is situated in an urban district, shall not act or vote in any case in which guardians of such union act or vote as members of the rural authority, unless he is the owner or occupier of property situated in the rural district of a value sufficient to qualify him as an elective guardian for the union :
- (2.) An elective guardian of any parish belonging to such union, and forming or being wholly included within an urban district, shall not act or vote in any case in which guardians of such union act or vote as members of the rural authority :
- (3.) Where part of a parish belonging to a rural union forms or is situated in an urban district, the Local Government Board may by order divide such parish into separate wards, and determine the number of guardians to be elected by such wards respectively, in such manner as to provide for the due representation of the part of the parish situated within the rural district ; but until such order has been made the guardian or guardians of such parish may act and vote as members of the rural authority in the same manner as if no part of such parish formed part of or was situated in an urban district.

Under 7 & 8 Vict. c. 101, section 19, a parish may be divided into wards for the election of guardians, but only where the population exceeds 20,000 according to the last census. Here there is no similar restriction.

Where the number of elective guardians who are not by this section disqualified from acting and voting as members of the rural authority is less than five, the Local Government Board may from time to time by order nominate such number of persons as may be necessary to make up that number from owners or occupiers of property situated in the rural district of a value sufficient to qualify them as elective guardians for the union, and the persons so nominated shall be entitled to act and vote as members of the rural authority but not further or otherwise.

This paragraph enables the Local Government Board to provide that the number of guardians other than ex-officio guardians acting as members of

the rural authority shall never be less than five: one or two instancees had occurred under the Public Health Act 1872 in which the number had been reduced to two or three.

The power thus given to the Local Government Board to nominate persons to act as members of a Board of Guardians is not altogether new: since by 30 Vict. c. 6, section 79, power is conferred on the Board to nominate members of Boards of Guardians in the metropolis. The tenure of office of persons nominated under this section has been always limited by the order nominating them to the current parochial year, and probably the same course will be pursued in any appointments made under this Act.

Subject to the provisions of this Act, all statutes orders and legal provisions applicable to any board of guardians shall apply to them in their capacity of rural authority under this Act for purposes of this Act; and it is hereby declared that the rural authority are the same body as the guardians of the union or parish for or within which such authority act. P.H. 1874  
s. 1.

The statutes orders and legal provisions applied to the rural authority are those which apply to the guardians generally; *e.g.* provisions as to their officers meetings and proceedings etc.: special provisions as to workhouses administration of relief etc. of course do not apply to the rural authority under this Act.

It will be observed that the rural authority are not a distinct body from the Board of Guardians, although certain guardians may not be able to act or vote with respect to sanitary business. Some doubt was felt on this point prior to the passing of section 1 of the Sanitary Law Amendment Act, 1874.

X. In addition to the powers rights duties capacities liabilities and obligations exerciseable by or attaching to an urban authority under this Act, every urban authority shall within their district (to the exclusion of any other authority which may have previously exercised or been subject to the same) have exercise and be subject to all the powers rights duties capacities liabilities and obligations within such district exerciseable or attaching by and to the local authority under the Bakehouse Regulation Act, and the Artizans and Labourers Dwellings Act, or any Acts amending the same. Powers  
and duties  
of urban  
authori-  
ties.  
P.H. 1872,  
s. 7.  
San. 1866,  
s. 43.

Where the Baths and Wash-houses Acts and the Labouring Classes' Lodging Houses Acts, or any of them, are in force within the district of any urban authority, such authority shall have all powers rights duties capacities liabilities and obligations in relation to such Acts exerciseable by or attaching to the council incorporated commissioners local board improvement commissioners and other commissioners or persons acting in the execution of the said Acts or any of them.

Where the Baths and Wash-houses Acts are not in force within the district of any urban authority, such authority may adopt such

Acts; and where the Labouring Classes Lodging Houses Acts are not in force within the district of any urban authority, such authority may adopt such Acts.

P.H. 1874,  
s. 3.

Where any local Act other than an Act for the conservancy of any river is in force within the district of an urban authority, conferring on any commissioners trustees or other persons powers for purposes the same as or similar to those of this Act (but not for their own pecuniary benefit), all the powers rights duties capacities liabilities and obligations of such commissioners trustees or other persons in relation to such purposes shall be transferred and attach to the said urban authority.

Thus where a town council are the urban authority the powers etc. of any Improvement Commissioners under a local Act in force within their district are transferred to the town council and cease to be exerciseable by the Improvement Commissioners.

See the saving in section 338.

Powers  
and duties  
of rural  
authori-  
ties.  
P.H. 1872,  
s. 8.

XI. In addition to the powers rights duties capacities liabilities and obligations exerciseable by or attaching to a rural authority under this Act, every rural authority shall, within their district, (to the exclusion of any other authority which may have previously exercised or been subject to the same) have exercise and be subject to all the powers rights duties capacities liabilities and obligations within such district exerciseable by or attaching to the local authority under the Bakehouse Regulation Act, or any Acts amending the same.

See section 276, which enables a rural authority to be invested with urban powers.

Vesting of  
property  
in local  
authori-  
ties.  
P.H. 1872,  
s. 9.  
P.H. 1874,  
s. 4.

XII. From and after the passing of this Act all such property real and personal, including all interests rights and easements in to and out of property real and personal (including things in action), as belongs to or is vested in, or would but for this Act have belonged to or been vested in the council of any borough or any improvement commissioners or local board as the urban sanitary authority of any district under the Sanitary Acts, or any board of guardians as the rural sanitary authority of any district under those Acts, shall continue vested or vest in such council, improvement commissioners, or local board, or board of guardians as the local authority of their district under this Act, subject to all debts liabilities and obligations affecting the same property.

All debts liabilities and obligations incurred by any authority whose powers rights duties liabilities capacities and obligations are



under this Act exercisable by or attach to a local authority may be enforced against the local authority to the same extent and in the same manner as they might have been enforced against the authority which incurred the same.

See p. 17.

## PART III.

### SANITARY PROVISIONS.

#### SEWERAGE AND DRAINAGE.

##### *Regulations as to Sewers and Drains.*

XIII. All existing and future sewers within the district of a local authority, together with all buildings works materials and things belonging thereto,

Sewers  
vested in  
local  
authority.  
P.H., s. 43.

Except

- (1.) Sewers made by any person for his own profit, or by any company for the profit of the shareholders ; and
  - (2.) Sewers made and used for the purpose of draining preserving or improving land under any local or private Act of Parliament, or for the purpose of irrigating land ; and
  - (3.) Sewers under the authority of any commissioners of sewers appointed by the Crown,
- shall vest in and be under the control of such local authority.

Provided that sewers within the district of a local authority which have been or which may hereafter be constructed by or transferred to some other local authority or by or to a sewage board or other authority empowered under any Act of Parliament to construct sewers shall (subject to any agreement to the contrary) vest in and be under the control of the authority who constructed the same or to whom the same have been transferred.

This proviso vests sewers constructed by a local authority without their district in the authority which constructed them.

The Sanitary Acts made no provision for the vesting of sewers in or the purchase of sewers by rural authorities ; this section therefore and the following section are extended to rural authorities.

A natural stream flowing through and draining agricultural land was widened and improved by commissioners under a private Act at the expense of the landowners. In its course it passed through a town receiving the drainage of a few houses. *Held* that it was not converted into a sewer within the meaning of section 43 of the P. H. Act 1848 (from which this section is taken), and that in any event it was within the second exception. *R. v. Godmanchester Local Board*, 11 Jur. (N. S.) 63 ; 34 L. J., Q. B. 13.



Power to  
purchase  
sewers.  
P.H.. s. 44.

XIV. Any local authority may purchase or otherwise acquire from any person any sewer, or any right of making or of user or other right in or respecting a sewer (with or without any buildings works materials or things belonging thereto), within their district, and any person may sell or grant to such authority any such sewer right or property belonging to him; and any purchase money paid by such authority in pursuance of this section shall be subject to the same trusts (if any) as the sewer right or property sold was subject to.

But any person who, previously to the purchase of a sewer by such authority, has acquired a right to use such sewer shall be entitled to use the same, or any sewer substituted in lieu thereof, to the same extent as he would or might have done if the purchase had not been made.

The word "perpetual" which was contained before the word "right" in s. 44 of the P. H. Act 1848 is omitted in line four from the end of this section.

Mainte-  
nance and  
making of  
sewers.  
P.H., s. 45.  
S.U. 1865,  
s. 4.

XV. Every local authority shall keep in repair all sewers belonging to them, and shall cause to be made such sewers as may be necessary for effectually draining their district for the purposes of this Act.

See with regard to the restrictions imposed on local authorities in the exercise of their statutory powers, sections 27 and 308 and notes. *Oldaker v. Hunt*, 6 De G. M. and G. 376.

Action against local authority for damage occasioned by irruption of sewage owing to defective construction of their sewers, *Brown v. Sargent*, 1 F. and F. 112.

Powers for  
making  
sewers.  
P.H., s. 45.  
L.G. Am.,  
s. 4.  
S.U. 1865,  
s. 4.

XVI. Any local authority may carry any sewer through across or under any turnpike road, or any street or place laid out as or intended for a street, or under any cellar or vault which may be under the pavement or carriageway of any street, and, after giving reasonable notice in writing to the owner or occupier (if on the report of the surveyor it appears necessary), into through or under any lands whatsoever within their district.

They may also (subject to the provisions of this Act relating to sewage works without the district of the local authority) exercise all or any of the powers given by this section without their district for the purpose of outfall or distribution of sewage.

The powers of this section may be exercised by the local authority without their actually acquiring the land under the powers of purchase vested in them by the Act. See *N. London R. Co. v. Metrop. Board of Works*, 1 Johns 405, decided on a similar section in the Metropolis Management Act 1855.

But the power to construct the sewer does not (it seems) carry with it a

right to lateral support for the sewer by the adjoining land. See *Metrop. Board of Works v. Metrop. R. Co.*, L. R. 3 C. P. 612, aff. 4 *ib.* 192.

As to the surveyor in rural districts see the definition in section 4.

Form and service of notices, sections 266-7.

For the provisions as to sewage works without the district, sections 32-4.

Compensation must be paid by the local authority for damage occasioned by the exercise of the powers of this section. (See section 308.)

XVII. Nothing in this Act shall authorise any local authority to make or use any sewer drain or outfall for the purpose of conveying sewage or filthy water into any natural stream or watercourse, or into any canal pond or lake, until such sewage or filthy water is freed from all excrementitious or other foul or noxious matter such as would affect or deteriorate the purity and quality of the water in such stream or watercourse or in such canal pond or lake.

Sewage to be purified before being discharged into streams. S.U. 1865, s. 11. L.G. Am., s. 4.

This section goes further than the sections of the Acts cited in the margin by enacting that nothing in the Act shall authorise either urban or rural authorities to send sewage into streams unless it is purified, and by the introduction of the words "canal pond or lake."

XVIII. Any local authority may from time to time enlarge lessen alter the course of cover in or otherwise improve any sewer belonging to them, and may discontinue close up or destroy any such sewer that has in their opinion become unnecessary, on condition of providing a sewer as effectual for the use of any person who may be deprived in pursuance of this section of the lawful use of any sewer : Provided that the discontinuance closing up or destruction of any sewer shall be so done as not to create a nuisance.

Alteration and discontinuance of sewers. P.H., s. 45. S.U. 1865, s. 4.

As to the power of closing a drain see also section 24.

XIX. Every local authority shall cause the sewers belonging to them to be constructed covered ventilated and kept so as not to be a nuisance or injurious to health, and to be properly cleansed and emptied.

Cleansing sewers. P.H., s. 46. S.U. 1865, s. 4.

The word "ventilated" is new. It will be observed that the section extends to all sewers belonging to a local authority, and therefore to sewers constructed under a local Act.

As to the construction and keeping of drains waterclosets etc. see section 40.

XX. An urban authority may, if they think fit, provide a map exhibiting a system of sewerage for effectually draining their district, and any such map shall be kept at their office, and shall at all reasonable times be open to the inspection of the ratepayers of their district.

Map of system of sewerage. P.H., s. 41.

This section does not extend to rural authorities, but as regards plans the power to provide sewers no doubt includes the power to provide any necessary maps for that purpose.

Power of owners and occupiers within district to drain into sewers of local authority. San. 1866, s. 8.; and see P.H., s. 47.

XXI. The owner or occupier of any premises within the district of a local authority shall be entitled to cause his drains to empty into the sewers of that authority on condition of his giving such notice as may be required by that authority of his intention so to do, and of complying with the regulations of that authority in respect of the mode in which the communications between such drains and sewers are to be made, and subject to the control of any person who may be appointed by that authority to superintend the making of such communications.

Any person causing a drain to empty into a sewer of a local authority without complying with the provisions of this section shall be liable to a penalty not exceeding twenty pounds, and the local authority may close any communication between a drain and sewer made in contravention of this section, and may recover in a summary manner from the person so offending any expenses incurred by them under this section.

This section follows the language of section 8 of the Sanitary Act 1866, which gave a right to owners and occupiers to cause their drains to empty into the sewers of the local authority on compliance with their regulations, etc. No such right was conferred by section 47 of the P. H. Act 1848. Under the enactment of the P. H. Act 1872 that the Local Government Acts should be in force in the district of every urban sanitary authority, the above sections of the Public Health Act and of the Sanitary Act 1866 were in many instances in force in the district of the same authority; an illustration (among many) of the kind of inconsistency that prevailed and of the necessity for consolidation of the law.

As to recovery of penalties and generally as to summary proceedings under this Act, see Part VII. Legal Proceedings.

Section 268 gives a general right of appeal to the Local Government Board to any person aggrieved by the decision of the local authority in any case in which they are empowered to recover in a summary manner any expenses incurred by them.

Use of sewers by owners and occupiers without district. San. 1866, s. 9. P.H., s. 48.

XXII. The owner or occupier of any premises without the district of a local authority may cause any sewer or drain from such premises to communicate with any sewer of the local authority on such terms and conditions as may be agreed on between such owner or occupier and such local authority, or as in case of dispute may be settled, at the option of the owner or occupier, by a court of summary jurisdiction or by arbitration in manner provided by this Act.

See the saving in s. 337 for the yearly payments made in certain cases in respect of such communications at the time of the passing of this Act.

The provisions as to arbitration will be found in sections 179-81.

It would appear that the local authority cannot refuse to allow the communication to be made. The terms and conditions are the only matters that must be settled, and apparently such terms might properly include a yearly payment.

For definition of court of summary jurisdiction see s. 4.



XXIII. Where any house within the district of a local authority is without a drain sufficient for effectual drainage, the local authority shall by written notice require the owner or occupier of such house, within a reasonable time therein specified, to make a covered drain or drains emptying into any sewer which the local authority are entitled to use, and which is not more than one hundred feet from the site of such house; but if no such means of drainage are within that distance, then emptying into such covered cesspool or other place not being under any house as the local authority direct; and the local authority may require any such drain or drains to be of such materials and size, and to be laid at such level, and with such fall as on the report of their surveyor may appear to them to be necessary.

Power of local authority to enforce drainage of undrained houses. P.H., s. 49. San. 1866, s. 10.

The local authority are the judges of the materials, and where A., who had been required by the vestry acting under a similar provision of the Metropolitan Management Act 1855 to use Lambeth pipes in the construction of his drains, used Aylesford pipes, an injunction was refused to prevent the vestry taking up the pipes which he had laid down. *Austin v. Vestry of Lambeth*, 4 Jur. (N. S.) 274, 1032, 27 L. J. (Ch.) 677.

If such notice is not complied with, the local authority may, after the expiration of the time specified in the notice, do the work required, and may recover in a summary manner the expenses incurred by them in so doing from the owner, or may by order declare the same to be private improvement expenses.

Provided that where, in the opinion of the local authority, greater expense would be incurred in causing the drains of two or more houses to empty into an existing sewer pursuant to this section, than in constructing a new sewer and causing such drains to empty therein, the local authority may construct such new sewer, and require the owners or occupiers of such houses to cause their drains to empty therein, and may apportion as they deem just the expenses of the construction of such sewer among the owners of the several houses, and recover in a summary manner the sums apportioned from such owners, or may by order declare the same to be private improvement expenses.

It would in some cases be cheaper for the purpose of enforcing the drainage of a row of undrained houses to construct a new sewer, than to compel such houses to drain into an existing sewer. The proviso introduced at the end of this section enables the local authority in such cases to construct a new sewer and to apportion the expense thereof among the owners of the houses.

In this and in the following section the power contained in section 49 of the Public Health Act 1848 for individual owners and occupiers to drain into the sea has been omitted.

As to private improvement expenses see sections 213, 215, and 257; and as to appeal see section 238.

Power of local authority to require houses to be drained into new sewers.

XXIV. Where any house within the district of a local authority has a drain communicating with any sewer, which drain though sufficient for the effectual drainage of the house is not adapted to the general sewerage system of the district, or is in the opinion of the local authority otherwise objectionable, the local authority may, on condition of providing a drain or drains as effectual for the drainage of the house, and communicating with such other sewer as they think fit, close such first mentioned drain, and may do any works necessary for that purpose, and the expenses of those works and of the construction of any drain or drains provided under this section shall be deemed to be expenses properly incurred by them in the execution of this Act.

This section is new. Instances have occurred in which a local authority have provided a system of sewers for their district into which the inhabitants have been compelled to drain. After some years it becomes necessary, in order to prevent river pollution or for other reasons, to construct a new system of sewers. It would be obviously unjust to compel the inhabitants to incur the expense a second time of making their drains communicate with the new sewers: on the other hand the local authority have no power to defray the expense out of the rates. This section enables them to do so.

Penalty on building house without drains. P.H., s. 49.

XXV. It shall not be lawful in any urban district newly to erect any house or to rebuild any house which has been pulled down to or below the ground floor, or to occupy any house so newly erected or rebuilt, unless and until a covered drain or drains be constructed, of such size and materials, and at such level, and with such fall as on the report of the surveyor may appear to the urban authority to be necessary for the effectual drainage of such house; and the drain or drains so to be constructed shall empty into any sewer which the urban authority are entitled to use, and which is within one hundred feet of some part of the site of the house to be built or rebuilt; but if no such means of drainage are within that distance then shall empty into such covered cess-pool or other place, not being under any house, as the urban authority direct.

Any person who causes any house to be erected or rebuilt or any drain to be constructed in contravention of this section shall be liable to a penalty not exceeding fifty pounds.

See section 23, and notes.

Penalty on unauthorised building over sewers and

XXVI. Any person who in any urban district, without the written consent of the urban authority,—

- (1.) Causes any building to be newly erected over any sewer of the urban authority; or,



(2.) Causes any vault arch or cellar to be newly built or constructed under the carriageway of any street,—  
 shall forfeit to the urban authority the sum of five pounds and a further sum of forty shillings for every day during which the offence is continued after written notice in this behalf from the urban authority ; and the urban authority may cause any building vault arch or cellar erected or constructed in contravention of this section to be altered pulled down or otherwise dealt with as they may think fit, and may recover in a summary manner any expenses incurred by them in so doing from the offender.

under  
streets.  
P.H., s. 47.

As to notices see sections 266-7 ; as to summary recovery of expenses see Part VII. Legal Proceedings.

### *Disposal of Sewage.*

XXVII. For the purpose of receiving storing disinfecting distributing or otherwise disposing of sewage any local authority may—

Powers  
for dispo-  
sing of  
sewage.  
P.H., s. 46.  
L.G., s. 30.  
S.U. 1865,  
s. 14.  
S.U. 1867,  
ss. 3, 4.

- (1.) Construct any works within their district, or (subject to the provisions of this Act as to sewage works without the district of the local authority) without their district ; and

As to sewage works without district, sections 32—34.

- (2.) Contract for the use of purchase or take on lease any land buildings engines materials or apparatus either within or without their district ; and
- (3.) Contract to supply for any period not exceeding twenty-five years any person with sewage, and as to the execution and costs of works either within or without their district for the purposes of such supply :

Provided that no nuisance be created in the exercise of any of the powers given by this section.

Public bodies in executing works for the benefit of their district must (in the absence of express power to create a nuisance) so execute them as not to create a nuisance. *Cator v. Lewisham Board of Works*, 5 B. and S. 115, 11 Jnr. (N. S.) 340, 13 L. T. (N. S.) 212 ; *A. G. v. Metropolitan Board of Works*, 9 L. T. (N. S.) 139 ; *A. G. v. Luton Board of Health*, 2 Jnr. (N. S.) 180.

Where the plaintiff has established his right the Court of Chancery will grant him an injunction, and it is no part of the Court's duty to inquire how the defendants can remove the nuisance. They must find their own way out of the difficulty, though where the difficulty is great the Court will give them time, and liberty to apply for an extension of such time. *A. G. v. Colney Hatch Lunatic Asylum*, 4 Ch. 146 ; *A. G. v. Mayor etc. of Birmingham*, 4 K. and J. 523. As to delay on part of persons aggrieved, *A. G. v. Bradford Navigation Co.*, 2 Eq. 71 ; *A. G. v. Leeds Corporation*, 5 Ch. 583.

In the case of a nuisance which is temporary and trifling, the Court will

not interfere, but ought to do so where the nuisance is permanent and serious; and in determining whether the nuisance is serious or not the Court will have regard to the consequences which may flow from it. *Goldsmid v. Tunbridge Wells Improvement Commissioners*, 1 Ch. 349; *A. G. v. Sheffield Gas Consumers' Co.*, 3 De G. M. and G. 301; *Lillywhite v. Trimmer*, 15 L. T. (N. S.) 318.

Breach of injunction enforced by sequestration. *Spokes v. Banbury Local Board*, 35 L. J. (Ch.) 105.

See also *Bidder v. Local Board of Croydon*, 6 L. T. (N. S.) 778; *Southampton etc. Bridge Co. v. Southampton Local Board*, 28 L. J., Q. B. 41; *A. G. v. Mayor etc. of Halifax*, 39 L. J. (Ch.) 129; *N. Stafford Rail. Co. v. Tunstall*, 39 L. J. (Ch.) 131; *Fielden v. Mayor etc. of Blackburn*, W. N. 1866, 256; *A. G. v. Gee*, 10 Eq. 131.

As to the acquisition by an individual of a right to sewage water discharged into a stream which would otherwise be pure, *Gaved v. Martyn*, 13 L. T. (N. S.) 74.

It must be remembered that section 17 declares that nothing in the Act shall authorise the discharge of any sewage which is not purified into any stream canal pond or lake.

Power to agree for communication of sewers with sewers of adjoining district. P.H. 1872, s. 32.

XXVIII. The local authority of any district may, by agreement with the local authority of any adjoining district, and with the sanction of the Local Government Board, cause their sewers to communicate with the sewers of such last-mentioned authority, in such manner and on such terms and subject to such conditions as may be agreed on between the local authorities, or, in case of dispute, may be settled by the Local Government Board: Provided that so far as practicable storm waters shall be prevented from flowing from the sewers of the first-mentioned authority into the sewers of the last-mentioned authority, and that the sewage of other districts or places shall not be permitted by the first-mentioned authority to pass into their sewers so as to be discharged into the sewers of the last-mentioned authority without the consent of such last-mentioned authority.

It is optional with the local authorities interested whether they will avail themselves of this provision. The Local Government Board are not empowered to require one authority to allow a communication to be made with their sewers by another authority. But where the local authorities agree that the communication shall be made, any dispute as to terms must be settled by the Local Government Board.

Power to deal with land appropriated to sewage purposes. S.U. 1867, s. 5.

XXIX. Any local authority may deal with any lands held by them for the purpose of receiving storing disinfecting or distributing sewage in such manner as they deem most profitable, either by leasing the same for a period not exceeding twenty-one years for agricultural purposes, or by contracting with some person to take the whole or a part of the produce of such land, or by farming such land and disposing of the produce thereof; subject to this restriction, that in dealing with land for any of the above purposes,

provision shall be made for effectually disposing of all the sewage brought to such land without creating a nuisance.

The period for which lands may be let by a local authority for sewage purposes has been extended from seven to twenty-one years.

XXX. Where any local authority agree with any person as to the supply of sewage and as to works to be made for the purpose of such supply, they may contribute to the expense of carrying into execution by such person all or any of the purposes of such agreement, and may become shareholders in any company with which any agreement in relation to the matters aforesaid has been or may hereafter be entered into by such local authority, or to or in which the benefits and obligations of such agreement may have been or may be transferred or vested.

Contribution to works under agreement for supply or distribution of sewage. S.U. 1867, s. 15.

XXXI. The making of works of distribution and service for the supply of sewage to lands for agricultural purposes shall be deemed an "improvement of land" authorised by "The Improvement of Land Act 1864," and the provisions of that Act shall apply accordingly.

Application of 27 & 28 Viet. c. 114, to works for supply of sewage. S.U. 1865, s. 15.

*As to Sewage Works without District.*

XXXII. A local authority shall, three months at least before commencing the construction or extension of any sewer or other work for sewage purposes without their district, give notice of the intended work by advertisement in one or more of the local newspapers circulated within the district where the work is to be made.

Notice to be given before commencing sewage works without district. L.G. Am., s. 5. S.U. 1867, s. 3.

The advertisement must be inserted in a local paper, and an advertisement in a London newspaper will not suffice. The introduction of the word "local" is new, but it only more clearly expresses what was intended before.

Such notice shall describe the nature of the intended work, and shall state the intended termini thereof, and the names of the parishes, and the turnpike roads and streets, and other lands (if any) through across under or on which the work is to be made, and shall name a place where a plan of the intended work is open for inspection at all reasonable hours; and a copy of such notice shall be served on the owners or reputed owners, lessees or reputed lessees, and occupiers of the said lands, and on the overseers of such parishes, and on the trustees, surveyors of highways, or other persons having the care of such roads or streets.

As to notices, see sections 266-267.



In case of objection, works not to be commenced without sanction of Local Government Board.  
L.G. Am., s. 6.

XXXIII. If any such owner, lessee, or occupier, or any such overseer, trustee, surveyor, or other person as aforesaid, or any other owner, lessee, or occupier who would be affected by the intended work, objects to such work, and serves notice in writing of such objection on the local authority at any time within the said three months, the intended work shall not be commenced without the sanction of the Local Government Board after such inquiry as herein-after mentioned, unless such objection is withdrawn.

Inspector to hold inquiry and report to Local Government Board.  
L.G. Am., s. 7.

XXXIV. The Local Government Board may, on application of the local authority, appoint an inspector to make inquiry on the spot into the propriety of the intended work and into the objections thereto, and to report to the Local Government Board on the matters with respect to which such inquiry was directed; and on receiving the report of such inspector, the Local Government Board may make an order disallowing or allowing, with such modifications (if any) as they may deem necessary, the intended work.

These sections provide in effect for an appeal to the Local Government Board by any person who would be affected by works proposed to be constructed by a local authority without their district for sewage purposes.

#### PRIVIES, WATERCLOSETS, ETC.

Penalty on building houses without privy accommodation.  
P.H., s. 51.  
San. 1868, ss. 4, 7.

XXXV. It shall not be lawful newly to erect any house, or to rebuild any house pulled down to or below the ground floor, without a sufficient watercloset earthcloset or privy and an ashpit furnished with proper doors and coverings.

Any person who causes any house to be erected or rebuilt in contravention of this enactment shall be liable to a penalty not exceeding twenty pounds.

Power of local authority to enforce provision of privy accommodation for houses.  
P.H., s. 51.  
San. 1868, s. 4.

XXXVI. If a house within the district of a local authority appears to such authority by the report of their surveyor or inspector of nuisances to be without a sufficient watercloset earthcloset or privy and an ashpit furnished with proper doors and coverings, the local authority shall, by written notice, require the owner or occupier of the house, within a reasonable time therein specified, to provide a sufficient watercloset earthcloset or privy and an ashpit furnished as aforesaid, or either of them, as the case may require.

If such notice is not complied with, the local authority may, at the expiration of the time specified in the notice, do the work thereby required to be done, and may recover in a summary manner

from the owner the expenses incurred by them in so doing, or may by order declare the same to be private improvement expenses : Provided that where a watercloset earthcloset or privy has been and is used in common by the inmates of two or more houses, or if in the opinion of the local authority a watercloset earthcloset or privy may be so used, they need not require the same to be provided for each house.

This section does not empower a local authority to lay down a general rule for the substitution of waterclosets for privies throughout their district without reference to the circumstances of each particular case. *Tinkler v. Wandsworth District Board of Works*, 2 Dc G. and J. 261, decided on section 80 of the Metropolis Management Act 1855. But in a particular case where the circumstances justify it the local authority may require a water-closet to be substituted for a privy. *Vestry of S. Luke v. Lewis*, 5 L. T. (N. S.) 608 ; 8 Jur. (N. S.) 432.

As to the surveyor in rural districts see the definition in section 4.

As to summary recovery of expenses, Part VII. Legal Proceedings.

As to private improvement expenses, sections 213-215, 257.

XXXVII. Any enactment in force within the district of any local authority requiring the construction of a watercloset shall be deemed to be satisfied by the construction, with the approval of the local authority, of an earthcloset. As to earth-closets. San. 1868, s. 7.

Any local authority may, as respects any house in which any earthcloset is in use with their approval, dispense with the supply of water required by any contract or enactment to be furnished to any watercloset in such house, on such terms as may be agreed on between such authority and the person providing or required to provide such supply of water.

Any local authority may themselves undertake or contract with any person to undertake a supply of dry earth or other deodorising substance to any house within their district for the purpose of any earthcloset.

In this Act the term "earthcloset" includes any place for the reception and deodorization of fœcal matter constructed to the satisfaction of the local authority.

XXXVIII. Where it appears to any local authority by the report of their surveyor that any house is used or intended to be used as a factory or building in which persons of both sexes are employed or intended to be employed at one time in any manufacture trade or business, the local authority may, if they think fit, by written notice require the owner or occupier of such house, within the time therein specified, to construct a sufficient number of waterclosets earthclosets or privies and ashpits for the separate use of each sex. Privy accommodation for factories. P.H., s. 52.



Any person who neglects or refuses to comply with any such notice shall be liable for each default to a penalty not exceeding twenty pounds, and to a further penalty not exceeding forty shillings for every day during which the default is continued.

The extension of this enactment to rural districts is new. It applies to all factories in which persons of both sexes are employed; the old law only applied where more than twenty persons were employed. As to the surveyor in rural districts see section 4.

Public  
necessa-  
ries.

P.H., s. 57.

XXXIX. Any urban authority may, if they think fit, provide and maintain, in proper and convenient situations, urinals water-closets earthclosets privies and ashpits, and other similar conveniences for public accommodation.

As to what is a proper situation, *Biddulph v. Vestry of St. George's Hanover Square*, 33 L. J. (Ch.) 411; 9 Jur. (N. S.) 953; 8 L. T. (N. S.) 558.

Drains,  
privies,  
&c., to be  
properly  
kept.  
P.H., s. 54.

XL. Every local authority shall provide that all drains water-closets earthclosets privies ashpits and cesspools within their district be constructed and kept so as not to be a nuisance or injurious to health.

See sections 42-44, 47 (3).

As to the construction and keeping of sewers see section 19.

Examina-  
tion of  
drains,  
privies,  
&c., on  
complaint  
of nui-  
sance.  
P.H., s. 54.  
L.G., s. 33.  
San. 1868,  
s. 4.

XLI. On the written application of any person to a local authority, stating that any drain watercloset earthcloset privy ashpit or cesspool on or belonging to any premises within their district is a nuisance or injurious to health (but not otherwise), the local authority may, by writing, empower their surveyor or inspector of nuisances, after twenty-four hours' written notice to the occupier of such premises, or in case of emergency without notice, to enter such premises, with or without assistants, and cause the ground to be opened, and examine such drain watercloset earthcloset privy ashpit or cesspool. If the drain watercloset earthcloset privy ashpit or cesspool on examination is found to be in proper condition, he shall cause the ground to be closed, and any damage done to be made good as soon as can be, and the expenses of the works shall be defrayed by the local authority. If the drain watercloset earthcloset privy ashpit or cesspool on examination appear to be in bad condition, or to require alteration or amendment, the local authority shall forthwith cause notice in writing to be given to the owner or occupier of the premises requiring him forthwith or within a reasonable time therein specified to do the necessary works; and if such notice is not complied with, the person to whom it is given

shall be liable to a penalty not exceeding ten shillings for every day during which he continues to make default, and the local authority may, if they think fit, execute such works, and may recover in a summary manner from the owner the expenses incurred by them in so doing, or may by order declare the same to be private improvement expenses.

There is no obligation on the surveyor or inspector of nuisances to cause the ground to be closed before the completion of the necessary works, if the drain etc. is otherwise than in proper condition.

As to summary recovery of expenses, see Part VII., Legal Proceedings. As to private improvement expenses, sections 213-15, 257; and as to appeal, section 268.

#### SCAVENGING AND CLEANSING.

##### *Regulations as to Streets and Houses.*

XLIII. Every local authority may, and when required by order of the Local Government Board shall, themselves undertake or contract for—

The removal of house refuse from premises ;

The cleansing of earthclosets privies ashpits and cesspools ;  
either for the whole or any part of their district : Moreover every urban authority and any rural authority invested by the Local Government Board with the requisite powers may, and when required by order of the said Board shall, themselves undertake or contract for the proper cleansing of streets, and may also themselves undertake or contract for the proper watering of streets for the whole or any part of their district.

Local authority to provide for cleansing of streets and removal of refuse.  
L. G., s. 32.  
P II. 1874,  
s. 21.  
San. 1868,  
s. 6.

For the power of the Local Government Board on application to declare any provisions of the Act in force in urban districts to be in force in any rural district or contributory place, and to invest a rural authority with all or any of the powers and duties of an urban authority under this Act, see section 276.

All matters collected by the local authority or contractor in pursuance of this section may be sold or otherwise disposed of, and any profits thus made by an urban authority shall be carried to the account of the fund or rate applicable by them for the general purposes of this Act ; and any profits thus made by a rural authority in respect of any contributory place shall be carried to the account of the fund or rate out of which expenses incurred under

this section by that authority in such contributory place are defrayed.

The profits in the case of a rural authority will be carried to the general expenses fund, unless the Local Government Board declare expenses incurred under this section to be special expenses. See section 229.

If any person removes or obstructs the local authority or contractor in removing any matters by this section authorised to be removed by the local authority, he shall for each offence be liable to a penalty not exceeding five pounds: Provided that the occupier of a house within the district shall not be liable to such penalty in respect of any such matters which are produced on his own premises and are intended to be removed for sale or for his own use, and are in the meantime kept so as not to be a nuisance.

Penalty on neglect of local authority to remove refuse, etc.  
P.H. 1874,  
s. 21.

XLIII. If a local authority who have themselves undertaken or contracted for the removal of house refuse from premises, or the cleansing of earthclosets privies ashpits and cesspools fail, without reasonable excuse, after notice in writing from the occupier of any house within their district requiring them to remove any house refuse or to cleanse any earthcloset privy ashpit or cesspool belonging to such house or used by the occupiers thereof, to cause the same to be removed or cleansed, as the case may be, within seven days, the local authority shall be liable to pay to the occupier of such house a penalty not exceeding five shillings for every day during which such default continues after the expiration of the said period.

Power of local authority to make byelaws imposing duty of cleansing, etc., on occupier.  
L.G., s. 32.  
San. 1868,  
s. 5.

XLIV. Where the local authority do not themselves undertake or contract for—

The cleansing of footways and pavements adjoining any premises,

The removal of house refuse from any premises,

The cleansing of earthclosets privies ashpits and cesspools belonging to any premises,

they may make byelaws imposing the duty of such cleansing or removal, at such intervals as they think fit, on the occupier of any such premises.

L.G., s. 32.  
(4).

An urban authority may also make byelaws for the prevention of nuisances arising from snow filth dust ashes and rubbish, and

for the prevention of the keeping of animals on any premises so as to be injurious to health.

The power of the local authority to make byelaws under this section (and indeed under the Act generally) must be strictly pursued, and not extended to purposes for which no power to make byelaws is given. See *R. v. Wood*, 5 El. and Bl. 49; S. C. nom. *R. v. Rose*, 1 Jur. (N. S.) 802; and *Everett v. Grapes*, 3 L. T. (N. S.) 669, a case under section 90 of 5 and 6 W. IV. c. 76, in which a byelaw prohibiting altogether the keeping of swine in the borough during certain periods of the year was held to be bad. See further section 47 (1).

XLV. Any urban authority may, if they see fit, provide in proper and convenient situations receptacles for the temporary deposit and collection of dust ashes and rubbish; they may also provide fit buildings and places for the deposit of any matters collected by them in pursuance of this part of this Act.

Power to provide receptacles for deposit of rubbish, P.H., s. 56.

XLVI. Where, on the certificate of the medical officer of health or of any two medical practitioners, it appears to any local authority that any house or part thereof is in such a filthy or unwholesome condition that the health of any person is affected or endangered thereby, or that the whitewashing cleansing or purifying of any house or part thereof would tend to prevent or check infectious disease, the local authority shall give notice in writing to the owner or occupier of such house or part thereof to whitewash cleanse or purify the same as the case may require.

Houses to be purified, on certificate of officer of health, or of two medical practitioners, P.H., s. 60.

If the person to whom notice is so given fails to comply therewith within the time therein specified, he shall be liable to a penalty not exceeding ten shillings for every day during which he continues to make default; and the local authority may, if they think fit, cause such house or part thereof to be whitewashed cleansed or purified, and may recover in a summary manner the expenses incurred by them in so doing from the person in default.

As to periodical limewashing of common lodging-houses, section 82.

The word "contagious," which is coupled with infectious in the corresponding section of the Act of 1848, is omitted here and throughout the Act. In the old law it had no defined meaning, and in fact was not used where it would seem most applicable: *e.g.*, with regard to infected persons entering public conveyances, Sanitary Act 1866, section 25.

As to notices, sections 266-7. As to summary recovery of expenses, Part VII., Legal Proceedings.

XLVII. Any person who in any urban district—

(1.) Keeps any swine or pigstye in any dwelling-house, or so as to be a nuisance to any person; or

This sub-section applies not merely to the place but also to the manner of keeping. *Digby v. West Ham Local Board*, 6 W. R. 468; 22 J. P. 304.

Penalty in respect of certain nuisances on premises, P.H., s. 59.



(2.) Suffers any waste or stagnant water to remain in any cellar or place within any dwelling-house for twenty-four hours after written notice to him from the urban authority to remove the same ; or

(3.) Allows the contents of any watercloset privy or cesspool to overflow or soak therefrom,

shall for every such offence be liable to a penalty not exceeding forty shillings, and to a further penalty not exceeding five shillings for every day during which the offence is continued, and the urban authority shall abate or cause to be abated every such nuisance, and may recover in a summary manner the expenses incurred by them in so doing from the occupier of the premises on which the nuisance exists.

Where the things mentioned in this section are a nuisance or injurious to health, they may also be dealt with under the provisions of the Act relating to nuisances, *infra*, sections 91-111.

#### *Offensive Ditches and Collections of Matter.*

Provision  
for obtain-  
ing order  
for cleans-  
ing offen-  
sive  
ditches  
lying near  
to or form-  
ing the  
bounda-  
ries of dis-  
tricts.

L. G., s. 31.

XLVIII. Where any watercourse or open ditch lying near to or forming the boundary between the district of any local authority and any adjoining district is foul and offensive, so as injuriously to affect the district of such local authority, any justice having jurisdiction in such adjoining district may, on the application of such local authority, summon the local authority of such adjoining district to appear before a court of summary jurisdiction to show cause why an order should not be made by such court for cleansing such watercourse or open ditch, and for executing such permanent or other structural works as may appear to such court to be necessary ; and such court, after hearing the parties, or *ex parte* in case of the default of any of them to appear, may make such order with reference to the execution of the works, and the persons by whom the same shall be executed, and by whom and in what proportions the costs of such works shall be paid, and also as to the amount thereof and the time and mode of payment, as to such court may seem reasonable.

This section meets the case of disputed liability to cleanse a boundary ditch.

As to appeal against the order, section 269.

Removal  
of filth on  
certificate

XLIX. Where in any urban district it appears to the inspector of nuisances that any accumulation of manure dung soil or filth or



other offensive or noxious matter ought to be removed, he shall give notice to the person to whom the same belongs, or to the occupier of the premises whereon it exists, to remove the same ; and if such notice is not complied with within twenty-four hours from the service thereof, the manure dung soil or filth or matter referred to shall be vested in and be sold or disposed of by the urban authority, and the proceeds thereof shall be applied in payment of the expenses incurred by them in the execution of this section ; and the surplus (if any) shall be paid on demand to the owner of the matter removed.

of inspec-  
tor of nui-  
sances.  
P.H., s. 59.  
L.G., s. 32.  
(5.)

The expenses of removal by the urban authority of any such accumulation, if and so far as they are not covered by the sale thereof, may be recovered by the urban authority in a summary manner from the person to whom the accumulation belongs, or from the occupier of the premises, or (where there is no occupier) from the owner.

The power contained in section 32 (5) of the Local Government Act 1858 to declare the expenses of removal to be private improvement expenses has been omitted.

As to summary recovery of expenses, see Part VII., Legal Proceedings.

L. Notice may be given by any urban authority (by public announcement in the district or otherwise) for the periodical removal of manure or other refuse matter from mews stables or other premises ; and where any such notice has been given any person to whom the manure or other refuse matter belongs who fails so to remove the same, or permits a further accumulation, and does not continue such periodical removal at such intervals as the urban authority direct, shall be liable without further notice to a penalty not exceeding twenty shillings for each day during which such manure or other refuse matter is permitted to accumulate.

Periodical  
removal  
of manure  
from  
mews and  
other pre-  
mises.  
San. 1866,  
s. 53.

The "public announcement" might no doubt be by advertisements placards or handbills, as in the case of "public notice" under Rule 46 in Sched. I. of the Ballot Act 1872.

#### WATER SUPPLY.

##### *Powers of Local Authority in relation to Supply of Water.*

LI. Any urban authority may provide their district or any part thereof, and any rural authority may provide their district or any contributory place therein, or any part of any such contributory

General  
powers for  
supplying  
district  
with  
water.

P.H., s. 75.  
San. 1866,  
s. 11.  
P.H. 1874,  
s. 33.

place, with a supply of water proper and sufficient for public and private purposes, and for those purposes or any of them may—

- (1.) Construct and maintain waterworks, dig wells, and do any other necessary acts; and
- (2.) Take on lease or hire any waterworks, and (with the sanction of the Local Government Board) purchase any waterworks, or any water or right to take or convey water, either within or without their district, and any rights powers and privileges of any water company; and
- (3.) Contract with any person for a supply of water.

The sanction of the Local Government Board is required (in conformity with a recommendation of the Sanitary Commission) to the purchase by a local authority of waterworks water rights etc. A contract for such a purchase should therefore be made dependent on the sanction of the Board being obtained to the purchase, and to the loan (if any) required for carrying it into effect.

For the general law relating to water rights and easements see Kent, Comm. III. 439 sqq.; Angell on Watercourses; Gale on Easements; *Chesmore v. Richards*, 2 H. and N. 168, 7 H. L. C. 349. and the other authorities there cited: see also *Grand Junction R. Co. v. Shugar*, 6 Ch. 483.

LII. Before commencing to construct waterworks within the limits of supply of any water company empowered by Act of Parliament or any order confirmed by Parliament to supply water, the local authority shall give written notice to every water company within whose limits of supply the local authority are desirous of supplying water stating the purposes for which and (as far as may be practicable) the extent to which water is required by the local authority.

In the Public Health Act 1848 this provision was not in terms restricted to companies empowered by Act of Parliament or any order confirmed by Parliament to supply water; but the Law Officers of the Crown some years since advised that it only applied to such companies.

As to notices and their service, see sections 266-7.

It shall not be lawful for the local authority to construct any waterworks within such limits if and so long as any such company are able and willing to supply water proper and sufficient for all reasonable purposes for which it is required by the local authority; and any difference as to whether the water which any such company are able and willing to lay on is proper and sufficient for the purposes for which it is required, or whether the purposes for which it is required are reasonable, or (if and so far as the charges of the company are not regulated by Parliament) as to the terms of

Restriction on construction of waterworks by local authority.  
P.H., s. 75.

supply, shall be settled by arbitration in manner provided by this Act.

The words "if and so far as the charges of the company are not regulated by Parliament" are new.

For the provisions as to arbitration, see sections 179-81.

LIII. At least two months before commencing to construct under the provisions of this Act any reservoir (other than a service reservoir or tank which will hold not more than one hundred thousand gallons) the local authority shall give notice of the intended work by advertisement in one or more of the local newspapers circulated within the district where the reservoir is to be constructed. As to construction of reservoirs.

If any person who would be affected by the intended work objects to such work, and serves notice in writing of such objection on the local authority at any time within the said two months, the intended work shall not be commenced without the sanction of the Local Government Board, after such inquiry as herein-after mentioned, unless such objection is withdrawn.

The Local Government Board may on application of the local authority appoint an inspector to make inquiry on the spot into the propriety of the intended work and into the objections thereto, and to report to the Local Government Board on the matters with respect to which such inquiry was directed; and on receiving the report of such inspector, the Local Government Board may make an order allowing, with such modifications (if any) as they may think fit, or disallowing the intended work.

This section was introduced during the passage of the Bill through the House of Lords.

As to service of notices, see sections 266-7.

LIV. Where a local authority supply water within their district, they shall have the same powers and be subject to the same restrictions for carrying water mains within or without their district as they have and are subject to for carrying sewers within or without their district respectively by the law for the time being in force. Power of carrying mains. L.G., s. 52.

The power to carry mains under lands outside the district is new, and is subject to the like conditions with respect to advertisements and deposit of plans of the intended works, as to service of notices on landowners and others, and as to the power of the Local Government Board to decide after inquiry on objections, as are imposed by sections 32-34 on carrying sewers under lands without the district.

As to  
supply of  
water.  
See  
P.H., s. 75.

LV. A local authority shall provide and keep in any waterworks constructed or purchased by them a supply of pure and wholesome water; and where a local authority lay any pipes for the supply of any of the inhabitants of their district, the water may be constantly laid on at such pressure as will carry the same to the top story of the highest dwelling-house within the district or part of the district supplied.

By the substitution of "shall" for "may" in the first line of this section, the same obligation is imposed on local authorities which is now imposed by the Towns Improvement Clauses Act, and on water companies by the Waterworks Clauses Acts.

Power to  
charge  
water  
rates and  
rents.  
P.H., s. 93.  
See L.G.  
Am., s. 20.

LVI. Where a local authority supply water to any premises they may charge in respect of such supply a water rate to be assessed on the net annual value of the premises ascertained in the manner by this Act prescribed with respect to general district rates; moreover they may enter into agreements for supplying water on such terms as may be agreed on between them and the persons receiving the supply, and shall have the same powers for recovering water rents or other payments accruing under such agreements as they have for recovering water rates.

See section 211 as to net annual value. The rate will be assessed on the occupier: for the payment and recovery of the rate, see the next section.

Incorporation of certain provisions of Waterworks Clauses Acts.

LVII. For the purpose of enabling any local authority to supply water there shall be incorporated with this Act the Waterworks Clauses Act 1863, and the following provisions of the Waterworks Clauses Act 1847 (namely),—

"With respect" (where the local authority have not the control of the streets) "to the breaking up of streets for the purpose of laying pipes"; and

"With respect to the communication pipes to be laid by the undertakers"; and

"With respect to the communication pipes to be laid by the inhabitants"; and

"With respect to waste or misuse of the water supplied by the undertakers"; and

"With respect to the provision for guarding against fouling the water of the undertakers"; and

"With respect to the payment and recovery of the water rates.

Provided,—

That the provisions with respect to the communication pipes to



be laid by the undertakers and the inhabitants respectively shall apply only in districts or parts of districts where the local authority lay any pipes for the supply of any of the inhabitants thereof ; and

That any dispute authorized or directed by any of the said incorporated provisions to be settled by an inspector or two justices shall be settled by a court of summary jurisdiction ; and

That section 44 of the Waterworks Clauses Act 1847 shall for the purposes of this Act have effect as if the words “with the consent in writing of the owner or reputed owner of any such house, or of the agent of such owner,” were omitted therefrom ; and any rent for pipes and works paid by an occupier under that section may be deducted by him from any rent from time to time due from him to such owner.

This section incorporating in accordance with the recommendation of the Sanitary Commission certain clauses of the Waterworks Clauses Acts, as also the three following sections relating to supply of water by measure, are new ; but require no explanation.

The incorporated provisions are printed at the end of this Act.

LVIII. A local authority may agree with any person to supply water by measure, and as to the payment to be made in the form of rent or otherwise for every meter provided by them ; they shall at all times at their own expense keep all meters and other instruments for measuring water let by them for hire to any person in proper order for correctly registering the supply of water, and in default of their so doing such person shall not be liable to pay rent for the same during such time as such default continues. The local authority shall for the purposes aforesaid have access to and be at liberty at all reasonable times to remove test inspect and replace any such meter or other instrument.

Power to supply water by measure.

LIX. Where water is supplied by measure by any local authority, the register of the meter or other instrument for measuring water shall be *primâ-facie* evidence of the quantity of water consumed ; and if the local authority and the consumer differ with respect to the quantity consumed, the difference shall be determined, on the application of either party, by a court of summary jurisdiction, and such court may order by which of the parties the costs of the proceedings before them shall be paid, and its decision shall be final and binding.

Register of meter to be evidence.

For definition of court of summary jurisdiction, see section 4.



Penalty  
for injur-  
ing  
meters.

LX. If any person wilfully or by culpable negligence injures or suffers to be injured any meter or fittings belonging to a local authority, or fraudulently alters the index to any meter, or prevents any meter from duly registering the quantity of water supplied, or fraudulently abstracts or uses water of the local authority he shall (without prejudice to any other right or remedy of the local authority) be liable to a penalty not exceeding forty shillings, and the local authority may in addition thereto recover the amount of any damage sustained. The existence of artificial means, under the control of the consumer, for causing any such alteration prevention abstraction or use shall be evidence that the consumer has fraudulently effected the same.

Power to  
supply  
water to  
authority  
of adjoining  
district.

LXI. Any local authority for the time being supplying water within their own district may, with the sanction of the Local Government Board, supply water to the local authority of any adjoining district on such terms as may be agreed on between such authorities, or as, in case of dispute, may be settled by arbitration in manner provided by this Act.

This section also is new, and will be found useful where a local authority obtain water outside their district. It will be observed that the local authority are not empowered to supply water to the inhabitants of the adjoining district, but to the local authority of such district, who must themselves supply the inhabitants.

There would seem however nothing to prevent the authority so supplied from selling the water to another local authority. See *Mayor of Halifax v. Soothill Upper Local Board*, 30 L.T. (N.S.) 513.

As to arbitration, sections 179-81.

Local au-  
thority  
may re-  
quire  
houses to  
be sup-  
plied with  
water in  
certain  
cases.  
P.H., s. 76.  
L.G., s. 51.  
San. 1866,  
s. 50.

LXII. Where on the report of the surveyor of a local authority it appears to such authority that any house within their district is without a proper supply of water and that such a supply of water can be furnished thereto at a cost not exceeding the water rate authorised by any local Act in force within the district, or where there is not any local Act so in force at a cost not exceeding twopence a week, or at such other cost as the Local Government Board may, on the application of the local authority, determine under all the circumstances of the case to be reasonable, the local authority shall give notice in writing to the owner, requiring him, within a time therein specified, to obtain such supply, and to do all such works as may be necessary for that purpose.

If such notice is not complied with within the time specified, the local authority may, if they think fit, do such works and obtain

such supply, and for that purpose may enter into any contract with any water company supplying water within their district; and water rates may be made and levied on the premises by the authority or company which furnishes the supply and may be recovered as if the owner or occupier of the premises had demanded a supply of water and were willing to pay water rates for the same, and any expenses incurred by the local authority in doing any such works may be recovered in a summary manner from the owner of the premises, or may by order of the local authority be declared to be private improvement expenses.

Under the old law it had been found in many cases impracticable to furnish a supply of water to a house at so low a rate as twopence a week; the Local Government Board are therefore empowered by this clause under special circumstances to enlarge the limit. Compare the provision in section 81 in the case of common lodging-houses.

Section 76 of the Act of 1848 appeared in general terms to empower the local authority to make a water rate though they did not themselves furnish the supply. It is difficult to see how such a power could legally be exercised in cases where the supply is furnished by a parliamentary water company, or how the rights of such a company and of the local authority were meant to be adjusted. This section however is express, that the rate is to be made and levied by the authority or company which actually furnishes the supply, though the local authority may enter into any contract (*e.g.* of indemnity in case of failure to recover the rate) with a water company for the purpose of obtaining a supply.

As to the surveyor in rural districts see section 4; as to notices sections 266-7; as to the recovery of water rates section 57; as to summary recovery of expenses Part VII. Legal Proceedings; and as to private improvement expenses sections 213-15, 257.

LXIII. Any water company may contract to supply water or may lease their waterworks to any local authority; and the directors of any water company in pursuance, in the case of a company registered under the Companies Act 1862, of a special resolution of the members passed in manner provided by that Act, and in the case of any other company of a resolution passed by three-fourths in number and value of the members present, either personally or by proxy, at a meeting specially convened with notice of the business to be transacted, may sell and transfer to any local authority, on such terms as may be agreed on between the company and the local authority, all the rights powers and privileges, and all or any of the waterworks premises and other property of the company, but subject to all liabilities to which the same are subject at the time of such purchase.

Powers of water company for supplying water to local authority. L.G., s. 53.

For special resolutions under the Companies' Act 1862 see section 51 of that Act.

The requirement of the consent of three-fourths of the shareholders in the case of other companies follows the precedent of the standing order of the House of Lords.

Vesting  
of public  
cisterns,  
etc., in  
local au-  
thority.  
P.H., s. 78.  
L.G., s. 45.  
(5.)  
T.L., s. 121.  
N.R., 860.  
s. 7.

LXIV. All existing public cisterns pumps wells reservoirs conduits aqueducts and works used for the gratuitous supply of water to the inhabitants of the district of any local authority shall vest in and be under the control of such authority, and such authority may cause the same to be maintained and plentifully supplied with pure and wholesome water, or may substitute maintain and plentifully supply with pure and wholesome water other such works equally convenient; they may also (subject to the provisions of this Act) construct any other such works for supplying water for the gratuitous use of any inhabitants who choose to carry the same away, not for sale, but for their own private use.

"Subject to the provisions of this Act"—*i.e.*, if a water company is able and willing to supply the water required, the local authority must not proceed to construct new works. See section 52.

Some doubt has been felt as to whether a local authority are bound to maintain existing works of this kind. The words in the Public Health Act 1848 are "*may* cause to be continued maintained and supplied." In the Towns Improvement Act the words are "*shall* cause," etc. As the Public Health Act has been followed in this section the local authority appear to have a discretion as to the continuance of the works.

Water for  
public  
baths, or  
trading or  
manufac-  
turing  
purposes.  
P.H., ss.  
77, 78.

LXV. Any local authority may, if they think fit, supply water from any waterworks purchased or constructed by them to any public baths or wash-houses, or for trading or manufacturing purposes, on such terms and conditions as may be agreed on between the local authority and the persons desirous of being so supplied; moreover, any local authority may, if they think fit, construct any works for the gratuitous supply of any public baths or wash-houses established otherwise than for private profit or supported out of any poor or borough rates.

See the Baths and Wash-houses Acts. (9 and 10 Viet. c. 74; 10 and 11 Viet. c. 61.)

Duty of  
urban au-  
thority to  
provide  
fire-plugs.  
T.L., s. 124.  
L.G., s. 45.

LXVI. Every urban authority shall cause fire-plugs and all necessary works machinery and assistance for securing an efficient supply of water in case of fire to be provided and maintained, and for this purpose they may enter into any agreement with any water company or person; and they shall paint or mark on the buildings and walls within the streets words or marks near to such fire-plugs to denote the situation thereof, and do such other things for the purposes aforesaid as they may deem expedient.

Agree-  
ments  
with uni-  
versities.  
P.H., s. 93

LXVII. In the Oxford or Cambridge district the local authority may supply water to any hall college or premises of the university within such district, on such terms with respect to the mode of

paying for such supply as may from time to time be agreed on between such university, or any hall or college thereof, and the local authority.

*Provisions for Protection of Water.*

LXVIII. Any person engaged in the manufacture of gas who—

Penalty for causing water to be corrupted by gas washings. N.R. 1855, ss. 23, 24, 25. P.H., s. 80.

- (1.) Causes or suffers to be brought or to flow into any stream reservoir aqueduct pond or place for water, or into any drain or pipe communicating therewith, any washing or other substance produced in making or supplying gas ; or,
- (2.) Wilfully does any act connected with the making or supplying of gas whereby the water in any such stream reservoir aqueduct pond or place for water is fouled,

shall forfeit for every such offence the sum of two hundred pounds, and, after the expiration of twenty-four hours' notice from the local authority or the person to whom the water belongs in that behalf, a further sum of twenty pounds for every day during which the offence is continued or during the continuance of the act whereby the water is fouled.

Every such penalty may be recovered, with full costs of suit, in any of the superior courts, in the case of water belonging to or under the control of the local authority by the local authority, and in any other case by the person into whose water such washing or other substance is conveyed or flows or whose water is fouled by any such act as aforesaid, or in default of proceedings by such person, after notice to him from the local authority of their intention to proceed for such penalty, by the local authority ; but such penalty shall not be recoverable unless it be sued for during the continuance of the offence, or within six months after it has ceased.

It would seem from the case of *Hipkins v. Birmingham and Stafford Gaslight Co.*, 5 H. and N. 74, 6 Jur. (N.S.) 173, that the penalty may be recovered though the offence is involuntary and unknown to the person committing it.

LXIX. Any local authority, with the sanction of the Attorney General, may, either in their own name or in the name of any other person, with the consent of such person, take such proceedings by indictment bill in Chancery action or otherwise, as they

Local authority may take proceedings to prevent



pollution  
of streams,  
S.U. 1865,  
s. 10.

may deem advisable for the purpose of protecting any watercourse within their jurisdiction from pollutions arising from sewage either within or without their district; and the costs of and incidental to any such proceedings, including any costs that may be awarded to the defendant, shall be deemed to be expenses properly incurred by such authority in the execution of this Act.

Power to  
close pol-  
luted  
wells, etc.  
P.H. 1874,  
s. 50.

LXX. On the representation of any person to any local authority that within their district the water in any well tank or cistern, public or private, or supplied from any public pump, and used or likely to be used by man for drinking or domestic purposes, or for manufacturing drinks for the use of man, is so polluted as to be injurious to health, such authority may apply to a court of summary jurisdiction for an order to remedy the same; and thereupon such court shall summon the owner or occupier of the premises to which the well tank or cistern belongs if it be private, and in the case of a public well tank cistern or pump, any person alleged in the application to be interested in the same, and may either dismiss the application, or may make an order directing the well tank cistern or pump to be permanently or temporarily closed, or the water to be used for certain purposes only, or such other order as may appear to them to be requisite to prevent injury to the health of persons drinking the water.

The court may, if they see fit, cause the water complained of to be analysed at the cost of the local authority applying to them under this section.

If the person on whom an order under this section is made fails to comply with the same, the court may on the application of the local authority authorise them to do whatever may be necessary in the execution of the order, and any expenses incurred by them may be recovered in a summary manner from the person on whom the order is made.

Expenses incurred by any rural authority in the execution of this section, and not recovered by them as aforesaid, shall be special expenses.

The words "or for manufacturing drinks for the use of man," the power to summon the owner of the premises, and the provision for enforcing orders made under the section, are new.

As to special expenses, sections 229-30.

For definition of court of summary jurisdiction, section 4.



REGULATION OF CELLAR DWELLINGS AND LODGING-HOUSES.

*Occupation of Cellar Dwellings.*

LXXI. It shall not be lawful to let or occupy or suffer to be occupied separately as a dwelling any cellar (including for the purposes of this Act in that expression any vault or underground room) built or rebuilt after the passing of this Act, or which is not lawfully so let or occupied at the time of the passing of this Act.

Prohibition of occupying cellar dwellings. P.H., s. 67. San. 1866, s. 42.

For definition of "occupying as a dwelling," see s. 74. The exception in favour of cellars lawfully let or occupied at the passing of the Act covers all cases of lawful occupation under the P. H. Act 1848 the Sanitary Act 1866 and any local Act.

LXXII. It shall not be lawful to let or occupy or suffer to be occupied separately as a dwelling, any cellar whatsoever, unless the following requisitions are complied with (that is to say),—

Existing cellar dwellings only to be let or occupied on certain conditions. *Ibid.*

Unless the cellar is in every part thereof at least seven feet in height, measured from the floor to the ceiling thereof, and is at least three feet of its height above the surface of the street or ground adjoining or nearest to the same; and

Unless there is outside of and adjoining the cellar and extending along the entire frontage thereof, and upwards from six inches below the level of the floor thereof up to the surface of the said street or ground, an open area of at least two feet and six inches wide in every part; and

Unless the cellar is effectually drained by means of a drain, the uppermost part of which is one foot at least below the level of the floor thereof; and

Unless there is appurtenant to the cellar the use of a watercloset earthcloset or privy and an ashpit, furnished with proper doors and coverings, according to the provisions of this Act; and

Unless the cellar has a fireplace with a proper chimney or flue, and an external window of at least nine superficial feet in area clear of the sash frame, and made to open in a manner approved by the surveyor (except in the case of an inner or back cellar let or occupied along with a front cellar as part of the same letting or occupation, in which case the external window may be of any dimensions not being less than four superficial feet in area clear of the sash frame).

Provided that in any area adjoining a cellar there may be steps necessary for access to such cellar, if the same be so placed as not to be over across or opposite to the said external window, and so as to allow between every part of such steps and the external wall of such cellar a clear space of six inches at the least and that over or across any such area there may be steps necessary for access to any building above the cellar to which such area adjoins, if the same be so placed as not to be over across or opposite to any such external window.

Penalty on persons offending against enactment. P.H., s. 67. San. 1866, s. 42.

LXXIII. Any person who lets occupies or knowingly suffers to be occupied for hire or rent, any cellar contrary to the provisions of this Act shall be liable for every such offence to a penalty not exceeding twenty shillings for every day during which the same continues to be so let or occupied after notice in writing from the local authority in this behalf.

Definition of occupying as a dwelling. *Ibid.*

LXXIV. Any cellar in which any person passes the night shall be deemed to be occupied as a dwelling within the meaning of this Act.

Power to close cellars in case of two convictions. San. 1866, s. 36.

LXXV. Where two convictions against the provisions of any Act relating to the occupation of a cellar as a separate dwelling place have taken place within three months (whether the persons so convicted were or were not the same) a court of summary jurisdiction may direct the closing of the premises so occupied for such time as it may deem necessary, or may empower the local authority permanently to close the same, and to defray any expenses incurred by them in the execution of this section.

As to appeal against orders of a court of summary jurisdiction, section 269.

### *Common Lodging-houses.*

Registers of common lodging-houses to be kept. P.H., s. 66. C.L. 1851, s. 7. C.L. 1853, s. 5.

LXXVI. Every local authority shall keep a register in which shall be entered the names and residences of the keepers of all common lodging-houses within the district of such authority, and the situation of every such house, and the number of lodgers authorised under this Act by such authority to be received therein.

A copy of any entry in such register, certified by the clerk of the local authority to be a true copy, shall be received in all courts and on all occasions as evidence, and shall be sufficient proof of the

matter registered, without production of the register or of any document or thing on which the entry is founded; and a certified copy of any such entry shall be supplied gratis by the clerk to any person applying at a reasonable time for the same.

These sections are a consolidation of section 66 of the P. H. Act 1848 and of the Common Lodging Houses Acts 1851 and 1853.

There is no definition of Common lodging-house; but in the Towns Improvement Act (s. 116) the term "Public lodging-house" includes every house in which persons are harboured or lodged for hire for a single night or for less than a week at one time, or any part of which is let for any term less than a week.

See the opinions of the Law Officers of the Crown as to the definition of "common lodging-house" in App. III.

LXXVII. A person shall not keep a common lodging-house or receive a lodger therein unless the house is registered in accordance with the provisions of this Act; nor unless his name as the keeper thereof is entered in the register kept under this Act: Provided that when the person so registered dies, his widow or any member of his family may keep the house as a common lodging-house for not more than four weeks after his death without being registered as the keeper thereof.

All common lodging-houses to be registered, and to be kept only by registered keepers. C.L. 1851, s. 8. C.L. 1853, s. 3.

It follows from this section that whenever the keeper of a common lodging-house changes his house, or whenever there is a change in the keeper of a house already registered, there must be a fresh registration.

As to penalty for receiving a lodger in an unregistered house, see section 86.

LXXVIII. A house shall not be registered as a common lodging-house until it has been inspected and approved for the purpose by some officer of the local authority; and the local authority may refuse to register as the keeper of a common lodging-house a person who does not produce to the local authority a certificate of character, in such form as the local authority direct, signed by three inhabitant householders of the parish respectively rated to the relief of the poor of the parish within which the lodging-house is situate for property of the yearly rateable value of six pounds or upwards.

Local authority may refuse to register houses. C.L. 1853, ss. 3, 4.

LXXIX. The keeper of every common lodging-house shall, if required in writing by the local authority so to do, affix and keep undefaced and legible a notice with the words "Registered Common Lodging-house" in some conspicuous place on the outside of such house.

Notice of registration to be affixed to houses, P.H. 1874, s. 49.

The keeper of any such house who, after requisition in writing from the local authority, refuses or neglects to affix or renew such

notice, shall be liable to a penalty not exceeding five pounds, and to a further penalty of ten shillings for every day that such refusal or neglect continues after conviction.

It will be sufficient if the requisition is signed by the clerk. See s. 266.  
As to the recovery and application of penalties, see Part VII. Legal Proceedings.

Byelaws  
to be made  
by local  
authority.  
P.H., s. 66.  
C.L. 1851,  
s. 9

LXXX. Every local authority shall from time to time make byelaws—

- (1.) For fixing and from time to time varying the number of lodgers who may be received into a common lodging-house, and for the separation of the sexes therein; and,
- (2.) For promoting cleanliness and ventilation in such houses; and,
- (3.) For the giving of notices and the taking precautions in the case of any infectious disease; and,
- (4.) Generally for the well ordering of such houses.

These byelaws like all other byelaws under the Act must be confirmed by the Local Government Board, instead of, as under s. 9 of the Common Lodging Houses Act 1851, by a Secretary of State.

As to byelaws generally, see sections 182-6.

Power to  
local au-  
thority to  
require  
supply of  
water to  
houses.  
C.L. 1853,  
s. 6.

LXXXI. Where it appears to any local authority that a common lodging-house is without a proper supply of water for the use of the lodgers, and that such a supply can be furnished thereto at a reasonable rate, the local authority may by notice in writing require the owner or keeper of such house, within a time specified therein, to obtain such supply, and to do all works necessary for that purpose; and if the notice be not complied with accordingly, the local authority may remove such house from the register until it is complied with.

Compare section 62. It will be observed that here the authority have no power to do the works on the default of the owner or keeper of the house: they can only remove the house from the register until the works are done.

Lime-  
washing  
of houses.  
C.L. 1851,  
s. 13.

LXXXII. The keeper of a common lodging-house shall, to the satisfaction of the local authority, limewash the walls and ceilings thereof in the first week of each of the months of April and October in every year, and shall if he fails to do so be liable to a penalty not exceeding forty shillings.

See also section 80 (2).

Power to  
order re-  
ports from

LXXXIII. The keeper of a common lodging-house in which beggars or vagrants are received to lodge shall from time to time,



if required in writing by the local authority so to do, report to the local authority, or to such person as the local authority direct, every person who resorted to such house during the preceding day or night, and for that purpose schedules shall be furnished by the local authority to the person so ordered to report, which schedules he shall fill up with the information required and transmit to the local authority.

keepers of  
houses  
receiving  
vagrants.  
C.L. 1853  
s. 8.

A penalty is imposed by section 86 for non-performance of this duty.

LXXXIV. The keeper of a common lodging-house shall, when a person in such house is ill of fever or any infectious disease, give immediate notice thereof to the medical officer of health of the local authority, and also to the poor law relieving officer of the union or parish in which the common lodging-house is situated.

Keepers to  
give notice  
of fever,  
etc., there-  
in.  
C.L. 1851,  
s. 11.

See section 80 (3); and for penalty for breach of this enactment, see section 86.

See section 124 for power to order removal of infected persons to hospital.

LXXXV. The keeper of a common lodging-house, and every other person having or acting in the care or management thereof, shall, at all times when required by any officer of the local authority, give him free access to such house or any part thereof; and any such keeper or person who refuses such access shall be liable to a penalty not exceeding five pounds.

As to in-  
spection.  
C.L. 1851,  
s. 12.

LXXXVI. Any keeper of a common lodging-house who—

(1.) Receives any lodger in such house without the same being registered under this Act; or

(2.) Fails to make a report, after he has been furnished by the local authority with schedules for the purpose in pursuance of this Act, of the persons resorting to such house; or

(3.) Fails to give the notices required by this Act where any person has been confined to his bed in such house by fever or other infectious disease,

shall be liable to a penalty not exceeding five pounds, and in the case of a continuing offence to a further penalty not exceeding forty shillings for every day during which the offence continues.

Offences  
by keepers  
of houses.  
C.L. 1851,  
s. 14.  
C.L. 1853,  
s. 11.  
P.H. s. 66.

As to the recovery and application of penalties, see Part VII. Legal Proceedings.

LXXXVII. In any proceedings under the provisions of this Act relating to common lodging-houses, if the inmates of any house or part of a house allege that they are members of the same

Evidence  
as to  
family in  
proceed-  
ings.

San. 1866, family, the burden of proving such allegation shall lie on the persons making it.  
s. 41.

Conviction for third offence to disqualify persons from keeping common lodging-house.  
C.L. 1853, s. 12.

LXXXVIII. Where the keeper of a common lodging-house is convicted of a third offence against any of the provisions of this Act relating to common lodging-houses, the court before whom the conviction for such third offence takes place may, if it thinks fit, adjudge that he shall not at any time within five years after the conviction, or within such shorter period after the conviction as the court thinks fit, keep a common lodging-house without the previous license in writing of the local authority, which license the local authority may withhold or grant on such terms and conditions as they think fit.

It will be sufficient if the license is signed by the clerk.

Interpretation of "common lodging-house."  
C.L. 1851, s. 2.

LXXXIX. For the purposes of this Act the expression "common lodging-house" includes, in any case in which only part of a house is used as a common lodging-house, the part so used of such house.

As to the meaning of the term "common lodging-house" see note on section 76.

### *Byelaws as to Houses let in Lodgings.*

Local Government Board may empower local authority to make bye-laws as to lodging-houses.  
San., s. 35.  
P.H. 1874, s. 47.

XC. The Local Government Board may, if they think fit, by notice published in the *London Gazette*, declare the following enactment to be in force within the district or any part of the district of any local authority, and from and after the publication of such notice such authority shall be empowered to make byelaws for the following matters (that is to say),—

- (1.) For fixing and from time to time varying the number of persons who may occupy a house or part of a house which is let in lodgings or occupied by members of more than one family, and for the separation of the sexes in a house so let or occupied :
- (2.) For the registration of houses so let or occupied :
- (3.) For the inspection of such houses :
- (4.) For enforcing drainage and the provision of privy accommodation for such houses, and for promoting cleanliness and ventilation in such houses :
- (5.) For the cleansing and limewashing at stated times of the

premises, and for the paving of the courts and courtyards thereof :

- (6.) For the giving of notices and the taking of precautions in case of any infectious disease.

This section shall not apply to common lodging-houses within the provisions of this Act relating to common lodging-houses.

See note on section 76. As to byelaws generally, see sections 182-6.

### NUISANCES.

The scheme of the enactments consolidated under this heading is to make (so to speak) a catalogue of certain mischiefs which would popularly be called nuisances, and to provide in addition to any other remedy (see s. 111) a particular mode of procedure for getting rid of them. It is made the duty of every local authority in the first place to ascertain from time to time by their officers what nuisances exist within their district ; on being satisfied of the existence of any nuisance to serve a notice on the offender requiring its abatement ; if the notice is disregarded then to summon the offender before a court of summary jurisdiction. If the case is proved before the court, an order is made directing the abatement of the nuisance or prohibiting its recurrence or as the case may require (s. 96). The order if disobeyed may be enforced by a continuing penalty ; moreover the local authority may enter the premises to which the order relates and do the necessary works and recover the expenses from the person on whom the order is made (ss. 98, 104). It must be added that an individual can if he chooses set the law in motion by complaining direct to a justice without the intervention of the local authority ; and that where the local authority think that summary proceedings under the Act would be inadequate, they may cause proceedings to be taken in any superior court (sections 105, 107).

XCI. For the purposes of this Act,—

1. Any premises in such a state as to be a nuisance or injurious to health :
- 2 Any pool ditch gutter watercourse privy urinal cesspool drain or ashpit so foul or in such a state as to be a nuisance or injurious to health :

Definition  
of nui-  
sances.  
N.R. 1855,  
s. 8.  
San. 1866,  
s. 19.

The words " or in such a state " are new.

3. Any animal so kept as to be a nuisance or injurious to health :
4. Any accumulation or deposit which is a nuisance or injurious to health :
5. Any house or part of a house so overcrowded as to be dangerous or injurious to the health of the inmates, whether or not members of the same family :

A doubt that had arisen in some cases under the Sanitary Act 1866 is cleared up by the insertion of the words " whether or not members of the same family."

The Court of Queen's Bench however had shortly before the passing of this Act decided, in the case of *Guardians of the Rye Union v. Paine*, 39 J.P. 375, that under the Sanitary Act 1866 it was immaterial whether the overcrowding was caused by members of more than one family or not.

6. Any factory workshop or workplace (not already under the operation of any general Act for the regulation of factories or bakehouses) not kept in a cleanly state, or not ventilated in such a manner as to render harmless as far as practicable any gases vapours dust or other impurities generated in the course of the work carried on therein that are a nuisance or injurious to health, or so overcrowded while work is carried on as to be dangerous or injurious to the health of those employed therein :

7. Any fireplace or furnace which does not as far as practicable consume the smoke arising from the combustible used therein, and which is used for working engines by steam, or in any mill factory dyehouse brewery bakehouse or gaswork, or in any manufacturing or trade process whatsoever ; and

Any chimney (not being the chimney of a private dwelling-house) sending forth black smoke in such quantity as to be a nuisance,

shall be deemed to be nuisances liable to be dealt with summarily in manner provided by this Act : Provided—

First, That a penalty shall not be imposed on any person in respect of any accumulation or deposit necessary for the effectual carrying on any business or manufacture if it be proved to the satisfaction of the court that the accumulation or deposit has not been kept longer than is necessary for the purposes of the business or manufacture, and that the best available means have been taken for preventing injury thereby to the public health :

Secondly, That where a person is summoned before any court in respect of a nuisance arising from a fireplace or furnace which does not consume the smoke arising from the combustible used in such fireplace or furnace, the court shall hold that no nuisance is created within the meaning of this Act, and dismiss the complaint, if it is satisfied that such fireplace or furnace is constructed in such manner as to consume as far as practicable, having regard to the nature of the manufacture or trade, all smoke arising therefrom, and that such fireplace or furnace



has been carefully attended to by the person having the charge thereof.

Difficulty in determining in some cases what is a nuisance within the meaning of this or any similar enactment is probably inevitable. In *G. Western R. Co. v. Bishop*, L. R. 7, Q. B. 550, it was held under the Nuisances Removal Act of 1855 that a railway bridge over a street, through the planks of which water dripped on the persons using the street was not within the words "any premises in such a state as to be a nuisance or injurious to health"; and some expressions of the court go near deciding that in order to convict it must be shown that the thing complained of is injurious to health. The effect however of the case when considered does not seem necessarily to extend beyond this—that the thing complained of must be shown to belong to the class of nuisances enumerated; so that, *e.g.*, obstructing a highway would clearly not be a nuisance liable to be dealt with under the N. R. Act or this Act.

The argument derived from the purpose and context of the enactment of the N. R. Act, which was mainly relied on in the above case, seems comparatively inapplicable to this section, since smoke nuisances, without any allusion to health, are included in it.

With respect to smoke nuisances it has been decided that emissions of smoke on separate days are separate offences, in respect of which separate summonses may be issued. *R. v. Waterhouse*, L. R. 7, Q. B. 555. In this case nineteen summonses for disobedience to the order of abatement on nineteen days were issued, and on each the justices imposed a fine of 10s., with 15s. costs on the first summons and 16s. on the rest; and under the circumstances the Court of Queen's Bench refused to interfere.

It need not be shown that the smoke is injurious to health. *Gaskell v. Bailey*, 38 J. P. 293.

XCII. It shall be the duty of every local authority to cause to be made from time to time inspection of their district, with a view to ascertain what nuisances exist calling for abatement under the powers of this Act, and to enforce the provisions of this Act in order to abate the same; also to enforce the provisions of any Act in force within their district requiring fireplaces and furnaces to consume their own smoke.

Duty of local authority to inspect district for detection of nuisances. San. 1866, s. 20.

The order of the Local Government Board prescribing the duties of Inspectors of Nuisances any part of whose salary is paid out of moneys voted by Parliament, impose this duty of inspection on that officer. See section III., Art (3) of the Order in Appendix III. With respect to fireplaces consuming their own smoke, see section 91 (7).

XCIII. Information of any nuisance under this Act in the district of any local authority may be given to such local authority by any person aggrieved thereby, or by any two inhabitant householders of such district, or by any officer of such authority, or by the relieving officer, or by any constable or officer of the police force of such district.

Information of nuisances to local authority. N.R. 1855, s.10.

Complaint may also be made direct to a justice by any person aggrieved, or by any inhabitant of, or owner of premises within, the district. See section 105.

Local authority to serve notice requiring abatement of nuisance. San. 1866, s. 21.

XCIV. On the receipt of any information respecting the existence of a nuisance the local authority shall, if satisfied of the existence of a nuisance, serve a notice on the person by whose act default or sufferance the nuisance arises or continues, or, if such person cannot be found, on the owner or occupier of the premises on which the nuisance arises, requiring him to abate the same within a time to be specified in the notice, and to execute such works and do such things as may be necessary for that purpose : Provided—

First, That where the nuisance arises from the want or defective construction of any structural convenience, or where there is no occupier of the premises, notice under this section shall be served on the owner :

*Cook v. Montague*, L. R. 7 Q. B. 418.

For definition of owner, see section 4.

Secondly, That where the person causing the nuisance cannot be found and it is clear that the nuisance does not arise or continue by the act default or sufferance of the owner or occupier of the premises, the local authority may themselves abate the same without further order.

The owner of a market who allowed sheep to be penned for sale in a street so that their droppings caused a nuisance was held to be the person by whose sufferance the nuisance arose. *Draper v. Sperring*, 30 L. J. (M. C.) 225 ; 4 L. T. (N. S.) 365. See also as to the person liable for smoke nuisance, *Barnes v. Akroyd*, L. R. 7 Q. B. 474 ; for nuisance from a drain, *Francomb v. Freeman*, L. R. 3 Q. B. 251 ; and *Margate Local Board v. Margate Harbour Co.*, 20 L. T. (N. S.) 564, in which case a harbour company were held bound to remove seaweed which had drifted into their harbour and become decomposed so as to cause a nuisance.

Form of notice, Sched. IV., Form A ; and as to service sections 266-7.

On non-compliance with notice complaint to be made to justice. N.R. 1855, s. 12.

XCV. If the person on whom a notice to abate a nuisance has been served makes default in complying with any of the requisitions thereof within the time specified, or if the nuisance, although abated since the service of the notice, is, in the opinion of the local authority, likely to recur on the same premises, the local authority shall cause a complaint relating to such nuisance to be made before a justice, and such justice shall thereupon issue a summons requiring the person on whom the notice was served to appear before a court of summary jurisdiction.

Form of summons, Sched. IV., Form B.

For definition of court of summary jurisdiction, see section 4.

Power of court of summary

XCVI. If the court is satisfied that the alleged nuisance exists, or that although abated it is likely to recur on the same premises,

the court shall make an order on such person requiring him to comply with all or any of the requisitions of the notice, or otherwise to abate the nuisance within a time specified in the order, and to do any works necessary for that purpose ; or an order prohibiting the recurrence of the nuisance and directing the execution of any works necessary to prevent the recurrence ; or an order both requiring abatement and prohibiting the recurrence of the nuisance.

jurisdiction to make order dealing with nuisance. N.R. 1855, s. 13.

The court may by their order impose a penalty not exceeding five pounds on the person on whom the order is made, and shall also give directions as to the payment of all costs incurred up to the time of the hearing or making the order of abatement or prohibition of the nuisance.

The power to impose a penalty is new ; under the N. R. Act 1855 a penalty could only be imposed for disobedience of the order when made.  
Form of order, Sched. IV., Form C.

XCVII. Where the nuisance proved to exist is such as to render a house or building, in the judgment of the court, unfit for human habitation, the court may prohibit the using thereof for that purpose until, in its judgment, the house or building is rendered fit for that purpose ; and on the court being satisfied that it has been rendered fit for that purpose the court may determine its previous order by another, declaring the house or building habitable, and from the date thereof such house or building may be let or inhabited.

Order of prohibition in case of house unfit for human habitation. Ib. s. 13.

For the general powers of local authorities to deal with houses unfit for human habitation. see the Artizans' and Labourers' Dwellings Act 1868 and the Artizans' and Labourers' Dwellings Improvement Act 1875.

It will be observed that this section only applies where the unfitness arises from one of the nuisances enumerated in section 91.

XCVIII. Any person not obeying an order to comply with the requisitions of the local authority or otherwise to abate the nuisance, shall, if he fails to satisfy the court that he has used all due diligence to carry out such order, be liable to a penalty not exceeding ten shillings per day during his default ; and any person knowingly and wilfully acting contrary to an order of prohibition shall be liable to a penalty not exceeding twenty shillings per day during such contrary action ; moreover, the local authority may enter the premises to which any order relates, and abate the nuisance, and do whatever may be necessary in execution of such order, and re-

Penalty for contravention of order of court. Ib. s. 14.



cover in a summary manner the expenses incurred by them from the person on whom the order is made.

The local authority have a discretion as to entering and doing what is necessary to abate the nuisance, and a mandamus to compel them to act will not be granted. *Local Board of W. Ham. ex parte Bassett*, 3 Jur. (N. S.) 136, 26 L. J. (M. C.) 64.

As to recovery and application of penalties, and summary recovery of expenses, see Part VII. Legal Proceedings.

Appeal  
against  
order.  
N. R. 1855,  
ss. 15, 16.

XCIX. Where any person appeals against an order to the court of quarter sessions in manner provided by this Act no liability to penalty shall arise, nor shall any proceedings be taken or work be done under such order, until after the determination of such appeal, unless such appeal ceases to be prosecuted.

The N. R. Act 1855 only gave an appeal against orders of prohibition, but by section 269 of this Act the right of appeal is general.

In certain  
cases order  
may be  
addressed  
to local  
authority.  
Ib. s. 17.

C. Whenever it appears to the satisfaction of the court of summary jurisdiction that the person by whose act or default the nuisance arises, or the owner or occupier of the premises is not known or cannot be found, then the order of the court may be addressed to and executed by the local authority.

Form of order, Sched. IV., Form D.

Power to  
sell  
manure,  
etc.  
Ib. s. 18.

CI. Any matter or thing removed by the local authority in abating any nuisance under this Act may be sold by public auction; and the money arising from the sale may be retained by the local authority, and applied in payment of the expenses incurred by them with reference to such nuisance, and the surplus (if any) shall be paid, on demand, to the owner of such matter or thing.

Compare section 49.

See definition of owner in section 4.

Power of  
entry of  
local au-  
thority.  
Ib. s. 11.  
San. 1866,  
ss. 20 and  
31.

CII. The local authority, or any of their officers, shall be admitted into any premises for the purpose of examining as to the existence of any nuisance thereon, or of enforcing the provisions of any Act in force within the district requiring fireplaces and furnaces to consume their own smoke at any time between the hours of nine in the forenoon and six in the afternoon, or in the case of a nuisance arising in respect of any business, then at any hour when such business is in progress or is usually carried on.

Where under this Act a nuisance has been ascertained to exist, or an order of abatement or prohibition has been made, the local authority or any of their officers shall be admitted from time to



time into the premises between the hours aforesaid, until the nuisance is abated, or the works ordered to be done are completed as the case may be.

Where an order of abatement or prohibition has not been complied with, or has been infringed, the local authority, or any of their officers, shall be admitted from time to time at all reasonable hours, or at all hours during which business is in progress or is usually carried on, into the premises where the nuisance exists, in order to abate the same.

If admission to premises for any of the purposes of this section is refused, any justice on complaint thereof on oath by any officer of the local authority (made after reasonable notice in writing of the intention to make the same has been given to the persons having custody of the premises), may, by order under his hand, require the person having custody of the premises to admit the local authority, or their officer, into the premises during the hours aforesaid, and if no person having custody of the premises can be found, the justice shall, on oath made before him of that fact, by order under his hand authorise the local authority or any of their officers to enter such premises during the hours aforesaid.

Any order made by a justice for admission of the local authority or any of their officers on premises shall continue in force until the nuisance has been abated, or the work for which the entry was necessary has been done.

It is to be observed that if an officer of the local authority is refused admittance in the first instance, he is not entitled to enforce entrance without obtaining the order of a justice.

Form of order for admission, Sched. IV., Form F. The next section imposes a penalty of £5 on disobedience.

CIII. Any person who refuses to obey an order of a justice for admission of the local authority or any of their officers on any premises shall be liable to a penalty not exceeding five pounds.

Penalty for disobedience of order. N.R. 1855, s. 36.

CIV. All reasonable costs and expenses incurred in making a complaint, or giving notice, or in obtaining any order of the court or any justice in relation to a nuisance under this Act, or in carrying the same into effect, shall be deemed to be money paid for the use and at the request of the person on whom the order is made; or if the order is made on the local authority, or if no order is made, but the nuisance is proved to have existed when the com-

Costs and expenses of execution of provisions relating to nuisances. Ib. s. 19.

plaint was made or the notice given, then of the person by whose act or default the nuisance was caused ; and in case of nuisances caused by the act or default of the owner of premises such costs and expenses may be recovered from any person who is for the time being owner of such premises : Provided that such costs and expenses shall not exceed in the whole one year's rackrent of the premises.

Such costs and expenses, and any penalties incurred in relation to any such nuisance, may be recovered in a summary manner or in any county or superior court ; and the court shall have power to divide costs expenses and penalties between persons by whose acts or defaults a nuisance is caused as to it may seem just.

San. 1866,  
s. 34.

Any costs and expenses recoverable under this section by a local authority from an owner of premises may be recovered from the occupier for the time being of such premises ; and the owner shall allow such occupier to deduct any moneys which he pays under this enactment out of the rent from time to time becoming due in respect of the said premises, as if the same had been actually paid to such owner as part of such rent :

Provided, that no such occupier shall be required to pay any further sum than the amount of rent for the time being due from him, or which, after demand of such costs or expenses from such occupier, and after notice not to pay his landlord any rent without first deducting the amount of such costs or expenses, becomes payable by such occupier, unless he refuses, on application to him by the local authority, truly to disclose the amount of his rent and the name and address of the person to whom such rent is payable ; but the burden of proof that the sum demanded from any such occupier is greater than the rent due by him at the time of such notice, or which has since accrued, shall lie on such occupier :

Provided also, that nothing herein contained shall affect any contract between any owner or occupier of any house building or other property whereby it is or may be agreed that the occupier shall pay or discharge all rates due and sums of money payable in respect of such house building or other property, or to affect any contract whatever between landlord and tenant.

The terms " owner " and " rackrent " are defined by section 4.  
As to summary recovery of expenses etc., see Part VII. Legal Proceedings.

CV. Complaint may be made to any justice of the existence of a nuisance under this Act on any premises within the district of any local authority by any person aggrieved thereby, or by any inhabitant of such district, or by any owner of premises within such district; and thereupon the like proceedings shall be had with the like incidents and consequences as to making of orders, penalties for disobedience of orders, appeal and otherwise, as in the case of a complaint relating to a nuisance made to a justice by the local authority :

Power of individual to complain to justice of nuisance. N. R. 1860, s. 13. P. H. 1874, s. 53.

Provided that the court may, if it thinks fit, adjourn the hearing or further hearing of the summons for an examination of the premises where the nuisance is alleged to exist, and may authorise the entry into such premises of any constable or other person for the purposes of such examination :

Provided also, that the court may authorise any constable or other person to do all necessary acts for executing an order made under this section, and to recover the expenses from the person on whom the order is made in a summary manner.

Any constable or other person authorised under this section shall have the like powers and be subject to the like restrictions as if he were an officer of the local authority authorised under the provisions of this Act relating to nuisances to enter any premises and do any acts thereon.

Notice to the person causing the nuisance before making a complaint is not required by this section. In the case of *Cocker v. Cardwell*, L. R. 5 Q. B. 15, the nature of the notice required by s. 21 of the Sanitary Act 1866, and by s. 94 of this Act appears to have been overlooked. It would be strange if the statute directed an individual to serve a notice on his neighbour requiring him within a specified time to abate an alleged nuisance and to do works necessary for that purpose.

For definition of owner, see section 4 ; as to the proceedings which may be taken, see the preceding sections ; as to appeal, see section 269 ; and as to powers of entry, see section 102.

CVI. Where it is proved to the satisfaction of the Local Government Board that a local authority have made default in doing their duty in relation to nuisances under this Act, the Local Government Board may authorise any officer of police acting within the district of the defaulting authority to institute any proceeding which the defaulting authority might institute with respect to such nuisances, and such officer may recover in a summary manner or in any county or superior court any expenses incurred by him, and not paid by the person proceeded against, from the defaulting authority :

Power of officer of police to proceed in certain cases against nuisances. San. 1866, s. 16. P. H. 1874, s. 19.

But such officer of police shall not be at liberty to enter any



house or part of a house used as the dwelling of any person without such person's consent, or without the warrant of a justice, for the purpose of carrying into effect this enactment.

This provision formerly referred only to the chief officer of police within the place, but has now been extended to any officer of police.

See also section 299 as to power of the Local Government Board to enforce the performance of duty by a defaulting local authority.

Local authority may take proceedings in superior court for abatement of nuisances.  
N.R. 1855,  
s. 30.

CVII. Any local authority may, if in their opinion summary proceedings would afford an inadequate remedy, cause any proceedings to be taken against any person in any superior court of law or equity to enforce the abatement or prohibition of any nuisance under this Act, or for the recovery of any penalties from or for the punishment of any persons offending against the provisions of this Act relating to nuisances, and may order the expenses of and incident to all such proceedings to be paid out of the fund or rate applicable by them to the general purposes of this Act.

"Summary proceedings" means the proceedings before a court of summary jurisdiction which may be taken under the preceding sections.

As to the fund or rate alluded to, see sections 207, 229.

Power to proceed where cause of nuisance arises without district.

CVIII. Where a nuisance under this Act within the district of a local authority appears to be wholly or partially caused by some act or default committed or taking place without their district, the local authority may take or cause to be taken against any person in respect of such act or default any proceedings in relation to nuisances by this Act authorised, with the same incidents and consequences as if such act or default were committed or took place wholly within their district; so, however, that summary proceedings shall in no case be taken otherwise than before a court having jurisdiction in the district where the act or default is alleged to be committed or take place.

This section shall extend to the Metropolis so far as to authorise proceedings to be taken under it by any nuisance authority in the Metropolis in respect of any nuisance within the area of their jurisdiction caused by an act or default committed or taking place within the district of a local authority under this Act; or by any such local authority in respect of any nuisance within their district caused by an act or default committed or taking place within the jurisdiction of any such nuisance authority.

In this section "nuisance authority" means the local authority



in the Metropolis for the execution of the Nuisances Removal Act for England 1855 and the Acts amending the same.

Under the N. R. Act 1855 a local authority could only proceed against a nuisance if the cause arose within their own district. *R. v. Cotton*, 5 Jur. (N. S.) 311, 28 L. J. (M. C.) 22, 7 W. R. 62. This section enables a local authority to proceed against a nuisance within their district caused by an act or default without their district; though summary proceedings are only to be taken before a court having jurisdiction in the district where the act or default is alleged to be committed or take place.

Nuisance authorities in the Metropolis (23 and 24 Vict., c. 77, ss. 2 and 6) are authorised to proceed under this section in the case of a nuisance within their district caused by an act or default committed within the district of a local authority under the Act and *vice versa*. The same kind of provision is made in the case of certain offensive trades (section 115).

For definition of the metropolis, see section 4.

CIX. Where two convictions against the provisions of any Act relating to the overcrowding of a house have taken place within a period of three months (whether the persons convicted were or were not the same) a court of summary jurisdiction may on the application of the local authority of the district in which the house is situated direct the closing of the house for such period as the court may deem necessary.

Provision  
in case of  
two con-  
victions  
for over-  
crowding.  
San. 1866,  
s. 36.

CX. For the purpose of the provisions of this Act relating to nuisances, any ship or vessel lying in any river harbour or other water within the district of a local authority shall be subject to the jurisdiction of that authority in the same manner as if it were a house within such district; and any ship or vessel lying in any river harbour or other water not within the district of a local authority shall be deemed to be within the district of such local authority as may be prescribed by the Local Government Board, and where no local authority has been prescribed, then of the local authority whose district nearest adjoins the place where such ship or vessel is lying.

Provision  
as to ships.  
Ib. ss. 30,  
32.

The master or other officer in charge of any such ship or vessel shall be deemed for the purpose of the said provisions to be the occupier of such ship or vessel.

This section shall not apply to any ship or vessel under the command or charge of any officer bearing Her Majesty's commission, or to any ship or vessel belonging to any foreign government.

This last paragraph slightly alters the former law, by making the exemption of Her Majesty's ships from the enactment continue only so long as they are under the charge of a commissioned officer. Thus if one of Her

Majesty's ships is lent to and placed under the charge of a public body for any purpose (as is sometimes the case) the section will apply.

As to the application to ships of regulations for the prevention of epidemic disease etc., see section 134. See also sections 287-92, as to Port sanitary authorities.

Provisions  
of Act  
relating to  
nuisances  
not to  
affect  
other  
remedies.

CXI. The provisions of this Act relating to nuisances shall be deemed to be in addition to and not to abridge or affect any right remedy or proceeding under any other provisions of this Act or under any other Act, or at law or in equity :

Provided that no person shall be punished for the same offence both under the provisions of this Act relating to nuisances, and under any other law or enactment.

#### OFFENSIVE TRADES.

These sections make special provisions for the regulation and prevention of nuisances from certain trades grouped under the name of offensive trades. They apply only in urban districts.

Restriction on establishment of offensive trade in urban district.  
P.H., s. 64.

CXII. Any person who, after the passing of this Act, establishes within the district of an urban authority, without their consent in writing, any offensive trade ; that is to say, the trade of—

Blood boiler, or

Bone boiler, or

Fellmonger, or

Soap boiler, or

Tallow melter, or

Tripe boiler, or

Any other noxious or offensive trade business or manufacture, shall be liable to a penalty not exceeding fifty pounds in respect of the establishment thereof, and any person carrying on a business so established shall be liable to a penalty not exceeding forty shillings for every day on which the offence is continued, whether there has or has not been any conviction in respect of the establishment thereof.

In order to come within this section an offensive trade must be similar in kind to those specified in it. Thus brickmaking is not necessarily an offensive trade within this section. *Wanstead Local Board v. Hill*, 9 Jur. (N. S.) 972, 32 L. J. (M. C.) 135, 7 L. T. (N. S.) 744. See especially the judgment of Willes J.

Byelaws as to offensive trades

CXIII. Any urban authority may from time to time make byelaws with respect to any offensive trades established with their

consent either before or after the passing of this Act, in order to prevent or diminish the noxious or injurious effects thereof.

in urban district.  
P.H. s. 64.

See the general provisions as to byelaws, sections 182-6.

CXIV. Where any candle-house melting-house melting-place or soap-house, or any slaughter-house, or any building or place for boiling offal or blood, or for boiling burning or crushing bones, or any manufactory building or place used for any trade business process or manufacture causing effluvia, is certified to any urban authority by their medical officer of health, or by any two legally qualified medical practitioners, or by any ten inhabitants of the district of such urban authority, to be a nuisance or injurious to the health of any of the inhabitants of the district, such urban authority shall direct complaint to be made before a justice, who may summon the person by or on whose behalf the trade so complained of is carried on to appear before a court of summary jurisdiction.

Duty of urban authority to complain to justice of nuisance arising from offensive trade.  
N.R. 1855, s. 27.  
San. 1866, s. 18.  
N.R. 1855, s. 30.

The court shall inquire into the complaint, and if it appears to the court that the business carried on by the person complained of is a nuisance, or causes any effluvia which is a nuisance or injurious to the health of any of the inhabitants of the district, and unless it be shown that such person has used the best practicable means for abating such nuisance, or preventing or counteracting such effluvia, the person so offending (being the owner or occupier of the premises, or being a foreman or other person employed by such owner or occupier,) shall be liable to a penalty not exceeding five pounds nor less than forty shillings, and on a second and any subsequent conviction to a penalty double the amount of the penalty imposed for the last preceding conviction, but the highest amount of such penalty shall not in any case exceed the sum of two hundred pounds :

Provided, that the court may suspend its final determination on condition that the person complained of undertakes to adopt, within a reasonable time, such means as the court may deem to be practicable and order to be carried into effect for abating such nuisance, or mitigating or preventing the injurious effects of such effluvia, or if such person gives notice of appeal to the court of quarter sessions in manner provided by this Act.

Any urban authority may, if they think fit, on such certificate as is in this section mentioned, cause to be taken any proceedings in



any superior court of law or equity against any person in respect of the matters alleged in such certificate.

An offender against the provisions relating to offensive trades of section 27 of the N. R. Act 1855, which are embodied in this section, might at his option, under section 28 of that Act, compel the local authority to abandon all proceedings before the justices, and to take proceedings in a superior court. This latter enactment has been omitted, since it amounted practically in some cases to depriving the local authority altogether of remedy.

It is to be remarked that the section is extended to effluvia which are a nuisance as well as to effluvia injurious to health.

The power given to any medical officer to grant a certificate under the corresponding section of the N. R. Act 1855 is now restricted to the medical officer of health. Every local authority must now have a medical officer of health, which was not the case when the N. R. Act was passed.

It will further be observed that this section only extends to urban districts. The analogous provision in the N. R. Act 1855 was applied rather vaguely to any place within the limits of a "city town or populous district."

For definition of court of summary jurisdiction and of court of quarter sessions, see section 4. As to recovery and application of penalties see Part VII. Legal Proceedings ; and as to appeal, section 269.

Power to  
proceed  
where nuisance  
arises  
from  
offensive  
trade carried on  
without  
district.

CXV. Where any house building manufactory or place which is certified in pursuance of the last preceding section to be a nuisance or injurious to the health of any of the inhabitants of the district of an urban authority is situated without such district, such urban authority may take or cause to be taken any proceedings by that section authorised in respect of the matters alleged in the certificate, with the same incidents and consequences, as if the house building manufactory or place were situated within such district ; so, however, that summary proceedings shall not in any case be had otherwise than before a court having jurisdiction in the district where the house building manufactory or place is situated.

This section shall extend to the Metropolis so far as to authorise proceedings to be taken under it by any nuisance authority in the Metropolis in respect of any house building manufactory or place which is certified as aforesaid to be a nuisance or injurious to the health of any of the inhabitants within the area of their jurisdiction, and is situated within the district of a local authority under this Act ; or by any urban authority in respect of any house building manufactory or place which is certified as aforesaid to be a nuisance or injurious to the health of any of the inhabitants of their district, and is situated within the jurisdiction of any such nuisance authority.

In this section "nuisance authority" means the local authority in the Metropolis for the execution of the Nuisances Removal Act for England 1855, and the Acts amending the same.

This section is new. See note to section 108.



## UNSOUND MEAT, ETC.

CXVI. Any medical officer of health or inspector of nuisances may at all reasonable times inspect and examine any animal carcase meat poultry game flesh fish fruit vegetables corn bread flour or milk exposed for sale, or deposited in any place for the purpose of sale, or of preparation for sale, and intended for the food of man, the proof that the same was not exposed or deposited for any such purpose, or was not intended for the food of man, resting with the party charged ; and if any such animal carcase meat poultry game flesh fish fruit vegetables corn bread flour or milk appears to such medical officer or inspector to be diseased or unsound or unwholesome or unfit for the food of man, he may seize and carry away the same himself or by an assistant, in order to have the same dealt with by a justice.

Power of medical officer of health to inspect meat, etc. N.R. 1863, s. 2. T.I., s. 131. P.H., s. 63. P.H. 1874, s. 54.

There is nothing to qualify the generality of the term "place" in this section. *Young v. Grattridge*, L. R. 4 Q. B. 166.

CXVII. If it appears to the justice that any animal carcase meat poultry game flesh fish fruit vegetables corn bread flour or milk so seized is diseased or unsound or unwholesome or unfit for the food of man, he shall condemn the same, and order it to be destroyed or so disposed of as to prevent it from being exposed for sale or used for the food of man ; and the person to whom the same belongs or did belong at the time of exposure for sale, or in whose possession or on whose premises the same was found, shall be liable to a penalty not exceeding twenty pounds for every animal carcase or fish or piece of meat flesh or fish, or any poultry or game, or for the parcel of fruit vegetables corn bread or flour or for the milk so condemned, or, at the discretion of the justice, without the infliction of a fine, to imprisonment for a term of not more than three months.

Power of justice to order destruction of unsound meat, etc. Ib.

The justice who, under this section, is empowered to convict the offender may be either the justice who may have ordered the article to be disposed or destroyed, or any other justice having jurisdiction in the place.

P.H. 1874, s. 54.

It seems from the case of *Gill v. Bright*, 41 L. J. (M. C.) 22, that notice must be given to the person liable to the penalty before an order is made for destruction of the meat etc.

As to the recovery and application of penalties, see Part VII. Legal Proceedings.

Penalty  
for hinder-  
ing officer  
from in-  
specting  
meat, etc.  
N.R. 1863,  
s. 3.

CXVIII. Any person who in any manner prevents any medical officer of health or inspector of nuisances from entering any premises and inspecting any animal carcase meat poultry game flesh fish fruit vegetables corn bread flour or milk exposed or deposited for the purpose of sale, or of preparation for sale, and intended for the food of man, or who obstructs or impedes any such medical officer or inspector or his assistant, when carrying into execution the provisions of this Act, shall be liable to a penalty not exceeding five pounds.

In the case of *Small v. Bickley*, 39 J. P. 422, the Court of Queen's Bench decided that a refusal on the part of the occupier of premises to accompany the inspector to the premises and open them for inspection on Sunday was not an obstruction within the meaning of this enactment.

For penalty on persons obstructing the execution of the Act, see section 306.

Search  
warrant  
may be  
granted by  
a justice.  
P.H. 1874,  
s. 55.

CXIX. On complaint made on oath by a medical officer of health, or by an inspector of nuisances, or other officer of a local authority, any justice may grant a warrant to any such officer to enter any building or part of a building in which such officer has reason for believing that there is kept or concealed any animal carcase meat poultry game flesh fish fruit vegetables corn bread flour or milk which is intended for sale for the food of man, and is diseased unsound or unwholesome, or unfit for the food of man; and to search for seize and carry away any such animal or other article in order to have the same dealt with by a justice under the provisions of this Act.

Any person who obstructs any such officer in the performance of his duty under such warrant shall, in addition to any other punishment to which he may be subject, be liable to a penalty not exceeding twenty pounds.

#### INFECTIOUS DISEASES AND HOSPITALS.

##### *Provisions against Infection.*

Duty of  
local  
authority  
to cause  
premises  
to be  
cleansed  
and disin-  
fected.  
San. 1866,  
s. 22.

CXX. Where any local authority are of opinion, on the certificate of their medical officer of health or of any other legally qualified medical practitioner, that the cleansing and disinfecting of any house or part thereof, and of any articles therein likely to retain infection, would tend to prevent or check infectious disease, it shall be the duty of such authority to give notice in writing to the owner or occupier of such house or part thereof requiring him

to cleanse and disinfect such house or part thereof and articles within a time specified in such notice.

The reference to the medical officer of health is new, and shows that primarily the certificate is to come from him. Under the regulations issued by the Local Government Board prescribing the duties of medical officers of health it is made incumbent on them when appointed under these regulations to give certificates as to any matter in respect of which a medical certificate is required as the basis or in aid of sanitary action. See Appendix III.

If the person to whom notice is so given fails to comply therewith, he shall be liable to a penalty of not less than one shilling and not exceeding ten shillings for every day during which he continues to make default; and the local authority shall cause such house or part thereof and articles to be cleansed and disinfected, and may recover the expenses incurred from the owner or occupier in default in a summary manner.

As to the form and service of notices, see sections 266, 267. As to recovery and application of penalties, sections 253, 254. As to summary recovery of expenses, section 251.

Where the owner or occupier of any such house or part thereof is from poverty or otherwise unable, in the opinion of the local authority, effectually to carry out the requirements of this section, such authority may, without enforcing such requirements on such owner or occupier with his consent cleanse and disinfect such house or part thereof and articles, and defray the expenses thereof.

The local authority may act under this paragraph if either the owner or the occupier is unable to carry out the requirements of the section. The local authority are the judges as to the ability of the owner or occupier; and it would therefore seem that the auditor could not disallow reasonable expenses incurred under this paragraph on the ground that the owner or occupier was able to cleanse and disinfect, if the local authority had in the resolution ordering the work to be done expressed a different opinion.

CXXI. Any local authority may direct the destruction of any bedding clothing or other articles which have been exposed to infection from any dangerous infectious disorder, and may give compensation for the same.

Destruction of infected bedding, etc.  
P.H. 1872,  
s. 51.

As to compensation, see section 307.

In the case of a rural authority expenses incurred under this section must be charged as general expenses. See section 229.

CXXII. Any local authority may provide a proper place, with all necessary apparatus and attendance, for the disinfection of bedding clothing or other articles which have become infected, and may cause any articles brought for disinfection to be disinfected free of charge.

Provision of means of disinfection.  
San. 1866,  
s. 23.



Provision  
of convey-  
ance for  
infected  
persons.  
San. 1866,  
s. 21. N.R.  
1860, s. 12.

CXXIII. Any local authority may provide and maintain a carriage or carriages suitable for the conveyance of persons suffering under any infectious disorder, and may pay the expense of conveying therein any person so suffering to a hospital or other place of destination.

Expenses incurred under this section by a rural authority must be charged as general expenses. See section 229.

Removal  
of infected  
persons  
without  
proper  
lodging to  
hospital  
by order  
of justice.  
San. 1866,  
s. 26.  
P.H. 1874,  
s. 51.  
Cf. C.L.  
1853, s. 7.

CXXIV. Where any *suitable* hospital or place for the reception of the sick is provided within the district of a local authority, *or within a convenient distance of such district*, any person who is suffering from any dangerous infectious disorder, and is without proper lodging or accommodation, or lodged in a room occupied by more than one family, or is on board any ship or vessel, may, on a certificate signed by a legally qualified medical practitioner and with the consent of the superintending body of such hospital or place, be removed, by order of any justice, to such hospital or place at the cost of the local authority; and any person so suffering, who is lodged in any common lodging-house, may, with the like consent and on a like certificate, be so removed by order of the local authority.

An order under this section may be addressed to such constable or officer of the local authority as the justice or local authority making the same may think expedient; and any person who wilfully disobeys or obstructs the execution of such order shall be liable to a penalty not exceeding ten pounds.

The words in italics are new, and the power formerly exercised by the Local Government Board of declaring a hospital to be within a convenient distance of the district of a local authority for the purposes of this enactment no longer exists. In any particular case the justices must determine whether the hospital is suitable, and where it is outside the district whether it is within a convenient distance.

Removal  
to hospital  
of infected  
persons  
brought  
by ships.  
San. 1866,  
s. 29.

CXXV. Any local authority may make regulations (to be approved of by the Local Government Board) for removing to any hospital to which such authority are entitled to remove patients, and for keeping in such hospital so long as may be necessary, any persons brought within their district by any ship or boat who are infected with a dangerous infectious disorder, and such regulations may impose on offenders against the same reasonable penalties not exceeding forty shillings for each offence.

"Regulations" made by a local authority under the Act are not subject to the same provisions as byelaws and consequently do not require con-



firmation by the Local Government Board, but unless expressly authorized (as by this section) the local authority cannot impose any penalty on breach of them. See section 188.

Regulations made under this section must be sent up to the Local Government Board for approval, but the formalities prescribed by section 184 in the case of confirmation of byelaws are not necessary.

CXXVI. Any person who—

- (1.) While suffering from any dangerous infectious disorder wilfully exposes himself without proper precautions against spreading the said disorder in any street public place shop inn or public conveyance, or enters any public conveyance without previously notifying to the owner conductor or driver thereof that he is so suffering ; or

Penalty on exposure of infected persons and things.  
San. 1866, ss. 25, 38.

In this sub-section the words " shop inn " are new.

- (2.) Being in charge of any person so suffering, so exposes such sufferer ; or
- (3.) Gives lends sells transmits or exposes, without previous disinfection, any bedding clothing rags or other things which have been exposed to infection from any such disorder,

shall be liable to a penalty not exceeding five pounds ; and a person who, while suffering from any such disorder, enters any public conveyance without previously notifying to the owner or driver that he is so suffering, shall in addition be ordered by the court to pay such owner and driver the amount of any loss and expense they may incur in carrying into effect the provisions of this Act with respect to disinfection of the conveyance.

Provided that no proceedings under this section shall be taken against persons transmitting with proper precautions any bedding clothing rags or other things for the purpose of having the same disinfected.

As to recovery and application of penalties, see Part VII. Legal Proceedings.

CXXVII. Every owner or driver of a public conveyance shall immediately provide for the disinfection of such conveyance after it has to his knowledge conveyed any person suffering from a dangerous infectious disorder ; and if he fails to do so he shall be liable to a penalty not exceeding five pounds ; but no such owner or driver shall be required to convey any person so suffering until he has been paid a sum sufficient to cover any loss

Penalty on failing to provide for disinfection of public conveyance.  
Ib. ss. 25, 38.

or expense incurred by him in carrying into effect the provisions of this section.

Penalty on letting houses in which infected persons have been lodging. San. 1866, s. 39.

CXXVIII. Any person who knowingly lets for hire any house room or part of a house in which any person has been suffering from any dangerous infectious disorder, without having such house room or part of a house and all articles therein liable to retain infection, disinfected to the satisfaction of a legally qualified medical practitioner, as testified by a certificate signed by him, shall be liable to a penalty not exceeding twenty pounds.

For the purposes of this section, the keeper of an inn shall be deemed to let for hire part of a house to any person admitted as a guest into such inn.

Penalty on persons letting houses making false statements as to infectious disease. P.H. 1874, s. 56.

CXXIX. Any person letting for hire or showing for the purpose of letting for hire any house or part of a house, who on being questioned by any person negotiating for the hire of such house or part of a house as to the fact of there being or within six weeks previously having been therein any person suffering from any dangerous infectious disorder, knowingly makes a false answer to such question, shall be liable, at the discretion of the court, to a penalty not exceeding twenty pounds, or to imprisonment, with or without hard labour, for a period not exceeding one month.

Power of Local Government Board to make regulations. San. 1866, s. 52.

CXXX. The Local Government Board may from time to time make alter and revoke such regulations as to the said Board may seem fit, with a view to the treatment of persons affected with cholera, or any other epidemic endemic or infectious disease, and preventing the spread of cholera and such other diseases, as well on the seas rivers and waters of the United Kingdom, and on the high seas within three miles of the coasts thereof, as on land ; and may declare by what authority or authorities such regulations shall be enforced and executed. Regulations so made shall be published in the *London Gazette*, and such publication shall be for all purposes conclusive evidence of such regulations.

P.H. 1872, s. 52.

Any person wilfully neglecting or refusing to obey or carry out or obstructing the execution of any regulation made under this section shall be liable to a penalty not exceeding fifty pounds.

A copy of the regulations issued by the Local Government Board with respect to cholera will be found in Appendix III. As to ships see also sections 110 and 125. See also the provisions as to Port Sanitary Authorities, sections 287—292.

### Hospitals.

CXXXI. Any local authority may provide for the use of the inhabitants of their district hospitals or temporary places for the reception of the sick, and for that purpose may—

Power of local authority to provide hospitals. San. 1866, s. 37.

Themselves build such hospitals or places of reception; or

Contract for the use of any such hospital or part of a hospital or place of reception; or

Enter into any agreement with any person having the management of any hospital, for the reception of the sick inhabitants of their district, on payment of such annual or other sum as may be agreed on.

Two or more local authorities may combine in providing a common hospital.

As a part of the workhouse, guardians provide wards for the treatment of paupers who are suffering from infectious diseases, and the question arises whether these wards can be made available for the purposes of this section. It would appear that they cannot, as they are provided under a power which only contemplates the ease of pauper patients. It is obvious moreover that persons who are not paupers would strongly object to being sent to a pauper hospital (see sections 124 and 125), and the justices would probably hesitate to overrule such an objection. On the other hand, if a hospital is provided by one or more of the sanitary authorities in any Union, there seems nothing to prevent the guardians from arranging to send their pauper cases to such hospital, and to pay a certain sum for each case so sent.

CXXXII. Any expenses incurred by a local authority in maintaining in a hospital, or in a temporary place for the reception of the sick (whether or not belonging to such authority), a patient who is not a pauper, shall be deemed to be a debt due from such patient to the local authority, and may be recovered from him at any time within six months after his discharge from such hospital or place of reception, or from his estate in the event of his dying in such hospital or place.

Recovery of costs of maintenance of patient in hospital.

This section is new.

CXXXIII. Any local authority may, with the sanction of the Local Government Board, themselves provide or contract with any person to provide a temporary supply of medicine and medical assistance for the poorer inhabitants of their district.

Power to provide temporary supply of medicine. San. 1868, s. 10.

## PREVENTION OF EPIDEMIC DISEASES.

The provisions under this heading are a consolidation of the Diseases Prevention Act 1855. See p. 4.

Power of  
Local  
Govern-  
ment  
Board to  
make regu-  
lations for  
prevention  
of dis-  
eases.  
D., ss. 5, 6,  
7, 11.

CXXXIV. Whenever any part of England appears to be threatened with, or is affected by any formidable epidemic endemic or infectious disease, the Local Government Board may make and from time to time alter and revoke regulations for all or any of the following purposes ; (namely),

(1.) For the speedy interment of the dead ; and

(2.) For house to house visitation ; and

(3.) For the provision of medical aid and accommodation, for the promotion of cleansing ventilation and disinfection, and for guarding against the spread of disease ;

and may by order declare all or any of the regulations so made to be in force within the whole or any part or parts of the district of any local authority, and to apply to any vessels, whether on inland waters or on arms or parts of the sea within the jurisdiction of the Lord High Admiral of the United Kingdom or the commissioners for executing the office of the Lord High Admiral for the time being, for the period in such order mentioned ; and may by any subsequent order abridge or extend such period.

As to ships see also sections 110, 125 and 130. See also as to Port Sanitary Authorities, sections 287—292.

Publica-  
tion of  
regula-  
tions and  
orders.  
D., s. 7.

CXXXV. All regulations and orders so made by the Local Government Board shall be published in the *London Gazette*, and such publication shall be conclusive evidence thereof for all purposes.

Local au-  
thority to  
see to the  
execution  
of regula-  
tions.  
D., ss. 8, 9.

CXXXVI. The local authority of any district within which or part of which regulations so issued by the Local Government Board are declared to be in force, shall superintend and see to the execution thereof, and shall appoint and pay such medical or other officers or persons, and do and provide all such acts matters and things as may be necessary for mitigating any such disease, or for superintending or aiding in the execution of such regulations, or for executing the same, as the case may require. Moreover, the local authority may from time to time direct any prosecution or legal proceedings for or in respect of the wilful violation or neglect of any such regulation.



CXXXVII. The local authority and their officers shall have power of entry on any premises or vessel for the purpose of executing or superintending the execution of any regulations so issued by the Local Government Board as aforesaid.

Power of entry.  
D., s. 4.

As to powers of entry generally, see section 305.

CXXXVIII. Whenever, in compliance with any regulation so issued by the Local Government Board as aforesaid, any poor law medical officer performs any medical service on board any vessel he shall be entitled to charge extra for such service, at the general rate of his allowance for services for the union or place for which he is appointed; and such charges shall be payable by the captain of such vessel on behalf of the owners thereof, together with any reasonable expenses for the treatment of the sick.

Poor law medical officer entitled to costs of attendance on board vessels.  
D., s. 12.

Where such services are rendered by any medical practitioner who is not a poor law medical officer, he shall be entitled to charges for any service rendered on board, with extra remuneration on account of distance, at the same rate as those which he is in the habit of receiving from private patients of the class of those attended and treated on shipboard, to be paid as aforesaid. In case of dispute in respect of such charges, such dispute may, where the charges do not exceed twenty pounds, be determined by a court of summary jurisdiction; and such court shall determine summarily the amount which is reasonable, according to the accustomed rate of charge within the place where the dispute arises for attendance on patients of the like class as those in respect of whom the charge is made.

CXXXIX. The Local Government Board may, if they think fit, by order authorise or require any two or more local authorities to act together for the purposes of the provisions of this Act relating to prevention of epidemic diseases, and may prescribe the mode of such joint action and of defraying the costs thereof.

Local Government Board may combine local authorities. San. 1866, s. 40.

As to union of districts, see also sections 279—285.

CXL. Any person who—

- (1.) Wilfully violates any regulation so issued by the Local Government Board as aforesaid; or,
  - (2.) Wilfully obstructs any person acting under the authority or in the execution of any such regulation,
- shall be liable to a penalty not exceeding five pounds.

Penalty for violating or obstructing the execution of regulations.  
D., s. 14.

As to recovery and application of penalties, see Part VII. Legal Proceedings.

## MORTUARIES, ETC.

Power of  
local au-  
thority to  
provide  
mortua-  
ries.  
P.H., s. 81.  
San. 1866,  
s. 27.

CXLI. Any local authority may, and if required by the Local Government Board shall, provide and fit up a proper place for the reception of dead bodies before interment (in this Act called a mortuary), and may make byelaws with respect to the management and charges for use of the same ; they may also provide for the decent and economical interment, at charges to be fixed by such byelaws, of any dead body which may be received into a mortuary.

The Public Health Act 1848 and the Sanitary Act 1866 enabled local authorities to provide mortuaries or places for the reception of the dead before interment. This section imposes on local authorities the obligation of making such provision, if required by the Local Government Board to do so.

As to byelaws, see sections 182—186.

Justice  
may in  
certain  
cases  
order re-  
moval of  
dead body  
to mor-  
tuary.  
San. 1866,  
s. 27.

CXLII. Where the body of one who has died of any infectious disease is retained in a room in which persons live or sleep, or any dead body which is in such a state as to endanger the health of the inmates of the same house or room is retained in such house or room, any justice may, on a certificate signed by a legally qualified medical practitioner, order the body to be removed, at the cost of the local authority, to any mortuary provided by such authority, and direct the same to be buried within a time to be limited in such order ; and unless the friends or relations of the deceased undertake to bury the body within the time so limited, and do bury the same, it shall be the duty of the relieving officer to bury such body at the expense of the poor rate, but any expense so incurred may be recovered by the relieving officer in a summary manner from any person legally liable to pay the expense of such burial.

Any person obstructing the execution of an order made by a justice under this section shall be liable to a penalty not exceeding five pounds.

Power of  
local au-  
thority to  
provide  
places for  
post-  
mortem  
examina-  
tions.  
San. 1866,  
28.

CXLIII. Any local authority may provide and maintain a proper place (otherwise than at a workhouse or at a mortuary) for the reception of dead bodies during the time required to conduct any post-mortem examination ordered by a coroner or other constituted authority, and may make regulations with respect to the management of such place ; and where any such place has been provided, a coroner or other constituted authority may order the

removal of the body to and from such place for carrying out such post-mortem examination, such costs of removal to be paid in the same manner and out of the same fund as the costs and fees for post-mortem examinations when ordered by the coroner.

## PART IV.

### LOCAL GOVERNMENT PROVISIONS.

#### HIGHWAYS AND STREETS.

##### *As to Highways.*

This part is a consolidation of the provisions of the Local Government Act 1858 which deal with the regulation of streets and buildings, provision of markets and public pleasure grounds, and so forth ; and applies only to urban districts. See p. 21.

CXLIV. Every urban authority shall within their district exclusively of any other person execute the office of and be surveyor of highways, and have exercise and be subject to all the powers authorities duties and liabilities of surveyors of highways under the law for the time being in force, save so far as such powers authorities or duties are or may be inconsistent with the provisions of this Act ; every urban authority shall also have exercise and be subject to all the powers authorities duties and liabilities which by the Highway Act 1835, or any Act amending the same, are vested in and given to the inhabitants in vestry assembled of any parish within their district.

Powers of surveyors of highways and of vestries under 5 & 6 W. 4. c. 50. vested in urban authority. P.H., s. 117. L.G. Am., s. 10. L.G., s. 37, (5.)

All ministerial acts required by any Act of Parliament to be done by or to the surveyor of highways may be done by or to the surveyor of the urban authority, or by or to such other person as they may appoint.

As to the costs of repair of highways in urban districts, and the provision, where part only of a parish is included in an urban district, for the excluded part see section 216.

CXLV. The inhabitants within any urban district shall not in respect of any property situated therein be liable to the payment of highway rate or other payment, not being a toll, in respect of making or repairing roads or highways without such district : Provided, that any person who in any place after the passing

Inhabitants of urban district not liable to rates for roads without district.

P.H., s. 117.  
L.G., s. 37.  
(6.) of this Act ceases under or by virtue of any provision of this Act, or of any order made thereunder, to be surveyor of highways within such place, may recover any highway rate made in respect of such place, and remaining unpaid at the time of his so ceasing to be such surveyor, as if he had not ceased to be such surveyor; and the money so recovered shall be applied, in the first place, in reimbursing himself any expenses incurred by him as such surveyor, and in discharging any debts legally owing by him on account of the highways within his jurisdiction; and the surplus (if any) shall be paid by him to the treasurer of the urban authority, and carried to the fund or rate applicable to the repair of highways within their district.

See note to section 144.

Power of urban authority to agree as to making of new public roads.  
L.G., s. 39. CXLVI. Any urban authority may agree with any person for the making of roads within their district for the public use through the lands and at the expense of such person, and may agree that such roads shall become and the same shall accordingly become on completion highways maintainable and repairable by the inhabitants at large within their district; they may also, with the consent of two-thirds of their number, agree with such person to pay, and may accordingly pay, any portion of the expenses of making such roads.

This section is useful where land is being dealt with for building purposes.

Power of urban authority to construct or adopt public bridges, etc., over or under canals, etc.  
Ib., s. 40. CXLVII. Any urban authority may agree with the proprietors of any canal railway or tramway to adopt and maintain any existing or projected bridge viaduct or arch within their district, over or under any such canal railway or tramway, and the approaches thereto, and may accordingly adopt and maintain such bridge viaduct or arch and approaches as parts of public streets or roads maintainable and repairable by the inhabitants at large within their district; or such authority may themselves agree to construct any such bridge viaduct or arch at the expense of such proprietors; they may also, with the consent of two-thirds of their number, agree to pay, and may accordingly pay, any portion of the expenses of the construction or alteration of any such bridge viaduct or arch, or of the purchase of any adjoining lands required for the foundation and support thereof, or for the approaches thereto.



CXLVIII. Any urban authority may by agreement with the trustees of any turnpike road, or with any person liable to repair any street or road, or any part thereof, or with the surveyor of any county bridge, take on themselves the maintenance repair cleansing or watering of any such street or road or any part thereof, or of any road over any county bridge, and the approaches thereto, or of any part of the said streets or roads within their district, and may remove any turnpike gates toll gates or bars, which may be situated within their district, and may erect other turnpike gates toll gates or bars in lieu thereof, on such terms as the urban authority and such trustees or person or surveyor as aforesaid may agree on :

Power of urban authority to enter into agreements with turnpike trustees as to repair, etc., of roads.  
L.G., s. 41.

Provided—

That where any mortgage debt is charged on the tolls of any such turnpike road, no agreement shall be made for the removal of any of the toll gates or bars thereon, unless with the previous consent in writing of a majority of at least two-thirds in value of the mortgagees ; and

That where the terms arranged include any annual or other payments from such urban authority to the trustees of any such turnpike road, then the payments may be secured on any fund or rate applicable by such authority to any of the purposes of this Act in the same manner as other charges on any such fund or rate are authorised by this Act.

Any executors administrators guardians trustees or committee of the estate of any idiot or lunatic, who are as such for the time being entitled to any money charged or secured on the tolls of any such turnpike road, may consent to any such agreement as aforesaid, as fully as if they respectively were so entitled in their own right, discharged of all trusts in respect thereof ; and all executors administrators guardians trustees and committees so consenting are hereby severally indemnified for so doing.

As to the fund or rate applicable by urban authorities to purposes of this Act, see section 207.

### *Regulation of Streets and Buildings.*

CXLIX. All streets, being or which at any time become highways repairable by the inhabitants at large within any urban

Vesting of streets, etc., in

urban au-  
thority.  
P.H., s. 68.  
15 & 16  
Viet. c. 42.  
s. 13.

district, and the pavements stones and other materials thereof, and all buildings implements and other things provided for the purposes thereof, shall vest in and be under the control of the urban authority.

The urban authority shall from time to time cause all such streets to be levelled paved metalled flagged channelled altered and repaired as occasion may require; they may from time to time cause the soil of any such street to be raised lowered or altered as they may think fit, and may place and keep in repair fences and posts for the safety of foot passengers.

Any person who without the consent of the urban authority wilfully displaces or takes up or who injures the pavement stones materials fences or posts of or the trees in any such street shall be liable to a penalty not exceeding five pounds, and to a further penalty not exceeding five shillings for every square foot of pavement stones or other materials so displaced taken up or injured; he shall also be liable in the case of any injury to trees to pay to the local authority such amount of compensation as the court may award.

The urban authority are not liable in an action for personal injuries occasioned through their non-feasance in neglecting to repair a highway. *Gibson v. Mayor etc. of Preston*, L. R. 5 Q. B. 218, 39 L. J., Q. B. 131, and cases therein cited. The established remedy is by indictment. But for misfeasance either by themselves or their servants—as where an accident was caused by the servants of a local board leaving a heap of stones in the road during the night without light or protection—they are liable. *Foreman v. Mayor etc. of Canterbury*, L. R. 6 Q. B. 214; 40 L. J., Q. B. 138.

The section gives a discretionary power to the urban authority to place and keep in repair fences etc., but does not impose on them any absolute duty to do so. *Wilson v. Mayor etc. of Halifax*, L. R. 3 Ex. 114; 37 L. J., Ex. 44; 17 L. T. (N. S.) 660.

The penalty on injury to trees is new.

Observe the definition of street in section 4.

As to the recovery and application of penalties, see Part VII. Legal Proceedings.

Power to  
compel  
paving,  
etc. of  
private  
streets.  
P.H., s. 69.  
L. G., s. 38.  
L. G. Am.,  
ss. 16, 17.

CL. Where any street within any urban district (not being a highway repairable by the inhabitants at large) or the carriageway footway or any other part of such street is not sewered levelled paved metalled flagged channelled and made good or is not lighted to the satisfaction of the urban authority, such authority may, by notice addressed to the respective owners or occupiers of the premises fronting adjoining or abutting on such parts thereof as may require to be sewered levelled paved metalled flagged or channelled, or to be lighted, require them to sewer level pave metal flag channel or make good or to provide proper means

for lighting the same within a time to be specified in such notice.

As to the general object of this section, see *Local Board of Hull v. Jones*, 1 H. and N. 489; 26 L. J., Ex. 33.

As to what is not a highway repairable by the inhabitants at large, *Illingworth v. Montgomery*, 2 L. T. (N. S.) 726; *Wallington app. White* resp., 7 Jur. (N. S.) 1013, 10 C. B. (N. S.) 128; *Willes v. Wallington*, 32 L. J., Ex. Ch. C. P. 86, 13 C. B. (N. S.) 865.

Owners cannot be required under this section to raise the street to the level of other streets. *Cury v. Local Board of Hull*, 11 Jur. (N. S.) 171, 34 L. J., M. C. 7.

A notice not specifying particulars of the works required, but containing a footnote that particulars could be obtained at the office of the surveyor was held good. *Bayley v. Wilkinson*, 10 Jur. (N. S.) 726; 10 L. T. (N. S.) 543; 33 L. J., M. C. 161.

A notice which is in part *ultra vires*—as including (for instance) part of a private garden—can be enforced as to the part which is valid. *Hall v. Potter*, 22 L. T. (N. S.) 454, 39 L. J., M. C. 1. Though the work has been done by the urban authority and the expenses apportioned and the apportionment not disputed, the expenses cannot be recovered without proof of the preliminary notice. *Jarrow Local Board v. Kennedy*, L. R. 6 Q. B. 128.

Trustee of a charity school held liable as owner under this section. *Bowditch v. Wakefield Local Board*, L. R. 6 Q. B. 567, 25 L. T. (N. S.) 88. See also *Pound v. Plumstead Board of Works*, L. R. 7 Q. B. 183; 41 L. J., M. C. 51.

See the definitions of “street” and “owner” in section 4, and for the form and service of notices see sections 266-7, Form G. in Sched. IV.

Before giving such notice the urban authority shall cause plans and sections of any structural works intended to be executed under this section, and an estimate of the probable cost thereof, to be made under the direction of their surveyor, such plans and sections to be on a scale of not less than one inch for eighty-eight feet for a horizontal plan, and on a scale of not less than one inch for ten feet for a vertical section, and, in the case of a sewer, showing the depth of such sewer below the surface of the ground: such plans sections and estimate shall be deposited in the office of the urban authority, and shall be open at all reasonable hours for the inspection of all persons interested therein during the time specified in such notice; and a reference to such plans and sections in such notice shall be sufficient without requiring any copy of such plans and sections to be annexed to such notice.

If such notice is not complied with, the urban authority may, if they think fit, execute the works mentioned or referred to therein; and may recover in a summary manner the expenses incurred by them in so doing from the owners in default, according to the frontage of their respective premises, and in such proportion as is settled by the surveyor of the urban authority, or (in case of dispute) by arbitration in manner provided by this Act; or the



urban authority may by order declare the expenses so incurred to be private improvement expenses.

The same proceedings may be taken, and the same powers may be exercised, in respect of any street or road of which a part is or may be a public footpath or repairable by the inhabitants at large as fully as if the whole of such street or road was a highway not repairable by the inhabitants at large.

The requirement that an estimate shall be made and deposited is new. As to summary recovery of expenses, see section 251 ; as to arbitration, sections 179-81. As to private improvement expenses, sections 213-15 ; as to appeal, section 268 ; and as to recovery of expenses from owners, section 257.

The frontagers are liable to pay without regard to the width of the street and whether their premises have access to it or not. *R. v. Newport Local Board*, 9 Jur. (N. S.) 736, 32 L. J., M. C. 97.

The urban authority must elect which method of recovering expenses incurred by them under this section they will adopt, and cannot adopt both. *Wilson v. Mayor of Bolton*, L. R. 7 Q. B. 103.

The case of *Whitchurch v. Fulham Board of Works*, L. R. 1 Q. B. 233, 12 Jur. (N. S.) 353, 35 L. J., M. C. 145, shews that where the whole of a road is to be repaired the surveyor cannot make separate apportionments for separate sections of the road, but must make one apportionment for the whole.

An arbitrator under this section has no jurisdiction to inquire into the reasonableness of the expenditure or any other matter but the apportionment. *Bayley v. Wilkinson*, 10 Jur. (N. S.) 726, 10 L. T. (N. S.) 543, 33 L. J., M. C. 161 ; *Cook v. Ipswich Local Board*, L. R. 6 Q. B. 128, 40 L. J., M. C. 169. The remedy for an overcharge is by appeal to the Local Government Board under section 268. If the first apportionment is a nullity, a second may be made. *Ib.*

Where the access to a house was damaged by works done by a local board the owner was held entitled to compensation. *R. v. Wallasey Local Board*, L. R. 4 Q. B. 351.

Exemption from expenses under last section of incumbent of church, etc.  
L.G., s. 38.

CLI. The incumbent or minister of any church chapel or place appropriated to public religious worship, which is now by law exempt from rates for the relief of the poor, shall not be liable to any expenses under the last preceding section, as the owner or occupier of such church chapel or place or of any churchyard or burial ground attached thereto, nor shall any such expenses be deemed to be a charge on such church chapel or other place, or on such churchyard or burial ground, or to subject the same to distress execution or other legal process ; and the urban authority may, if they think fit, undertake any works from the expenses of which any such incumbent or minister is hereby exempted.

The words "or occupier" appear to be unnecessary, as though notice may be served on owners or occupiers under the preceding section, expenses incurred by the urban authority can only be recovered from owners.

Power to declare private streets

CLII. When any street within any urban district not being a highway repairable by the inhabitants at large has been sewered levelled paved flagged metalled channelled and made good and



provided with proper means of lighting to the satisfaction of the urban authority, such authority may, if they think fit, by notice in writing put up in any part of the street, declare the same to be a highway, and thereupon the same shall become a highway repairable by the inhabitants at large ; and every such notice shall be entered among the proceedings of the urban authority.

when  
sewered,  
etc., to be  
highways.  
P.H., s. 70.  
L.G., s. 42.

Provided that no such street shall become a highway so repairable, if within one month after such notice has been put up the proprietor or the majority in number of proprietors of such street, by notice in writing to the urban authority, object thereto, and in ascertaining such majority joint proprietors shall be reckoned as one proprietor.

Refusal of urban authority to adopt as highway. *R. v. Dukinfield Local Board*, 32 L. J., M. C. 230.

CLIII. Where for any purpose of this Act any urban authority deem it necessary to raise sink or otherwise alter the situation of any water or gas pipes mains plugs or other waterworks or gasworks laid in or under any street, they may by notice in writing require the owner of the pipes mains plugs or works to raise sink or otherwise alter the situation of the same in such manner and within such reasonable time as is specified in the notice ; the expenses of or connected with any such alteration shall be paid by the urban authority ; and if such notice is not complied with the urban authority may themselves make the alteration required :

Power to  
require  
gas and  
water  
pipes to  
be moved.  
P.H., s. 71.

Provided—

That no such alteration shall be required or made which will permanently injure any such pipes mains plugs or works or prevent the water or gas from flowing as freely and conveniently as usual ; and

That where under any local Act of Parliament the expenses of or connected with the raising sinking or otherwise altering the situation of any water or gas pipes mains plugs or other waterworks or gasworks, are directed to be borne by the owner of such pipes or works, his liability in that respect shall continue in the same manner and under the same conditions in all respects as if this Act had not been passed.

CLIV. Any urban authority may purchase any premises for the purpose of widening opening enlarging or otherwise improving

Power to  
purchase  
premises

for im-  
provement  
of streets.  
P.H., s. 73.  
L.G., s. 36.

any street, or (with the sanction of the Local Government Board) for the purpose of making any new street.

No express power is given by the Act to the urban authority to make new streets, but this provision clearly implies the possession of that power. Under this section lands can of course only be purchased by agreement. As to compulsory purchasing of land, see section 176. Any land purchased of the urban authority not required for the purposes of the Act must be resold, unless the Local Government Board otherwise direct: see section 175.

Power to  
regulate  
line of  
buildings.  
L.G., s. 35.

CLV. When any house or building situated in any street in an urban district, *or the front thereof*, has been taken down, in order to be rebuilt or altered, the urban authority may prescribe the line in which any house or building, or the front thereof, to be built or rebuilt in the same situation shall be erected, and such house or building, or the front thereof, shall be erected in accordance therewith.

The urban authority shall pay or tender compensation to the owner or other person immediately interested in such house or building for any loss or damage he may sustain in consequence of his house or building being set back or forward, the amount of such compensation, in case of dispute, to be settled by arbitration in manner provided by this Act.

For definition of "house" and "street," see section 4.

The words in italics are new. They have been inserted to meet cases where in order to avoid the operation of this enactment one half of the house was taken down and rebuilt first, and then the other half.

Where a committee to whom a local board had delegated their powers for regulation of buildings etc. had approved plans for rebuilding a factory, it was held that the local board could not afterwards interfere with the erection of the factory according to the approved plans. *Slee v. Mayor etc. of Bradford*, 9 Jur. (N.S.) 815, 8 L. T. (N.S.) 491.

As to compensation and arbitration, see sections 308, 179-81.

Buildings  
not to be  
brought  
forward.  
L.G. Am.,  
s. 28.

CLVI. It shall not be lawful in any urban district, without the written consent of the urban authority, to bring forward any house or building forming part of any street, or any part thereof, beyond the front wall of the house or building on either side thereof, nor to build any addition thereto beyond the front of the house or building on either side of the same.

Any person offending against this enactment shall be liable to a penalty not exceeding forty shillings for every day during which the offence is continued after written notice in this behalf from the urban authority.

It will be sufficient if the consent is signed by the clerk. See section 166. On an indictment under section 28 of the Local Government Amendment

Act 1861 (which imposed no penalty) it was held to be a question of fact for the jury whether or not the house forms part of a street. *R. v. Fulford*, 10 Jur. (N. S.) 522, 10 L. T. (N. S.) 346.

CLVII. Every urban authority may make byclaws with respect to the following matters ; (that is to say,)

- (1.) With respect to the level width and construction of new streets, and the provisions for the sewerage thereof :
- (2.) With respect to the structure of walls foundations roofs and chimneys of new buildings for securing stability and the prevention of fires, and for purposes of health :

The word "chimneys" is new. As to what are to be deemed new buildings, see section 159.

- (3.) With respect to the sufficiency of the space about buildings to secure a free circulation of air, and with respect to the ventilation of buildings :
- (4.) With respect to the drainage of buildings, to waterclosets earthclosets privies ashpits and cesspools in connexion with buildings, and to the closing of buildings or parts of buildings unfit for human habitation, and to prohibition of their use for such habitation.

And they may further provide for the observance of such byelaws by enacting therein such provisions as they think necessary as to the giving of notices, as to the deposit of plans and sections by persons intending to lay out streets or to construct buildings, as to inspection by the urban authority, and as to the power of such authority (subject to the provisions of this Act) to remove alter or pull down any work begun or done in contravention of such byelaws: Provided that no byclaw made under this section shall affect any building erected in any place (which at the time of the passing of this Act is included in an urban sanitary district) before the Local Government Acts came into force in such place, or any building erected in any place (which at the time of the passing of this Act is not included in an urban sanitary district) before such place becomes constituted or included in an urban district, or by virtue of any order of the Local Government Board subject to this enactment.

A place not in an urban district would become subject to this enactment if the rural authority were under section 276 invested in it with the powers conferred by this section.

The provisions of this section and of the two last preceding sections shall not apply to buildings belonging to any railway

Power to make byelaws respecting new buildings, etc. L.G., s. 34. P.H. 1874, s. 44. L.G., s. 32. (4.)



company and used for the purposes of such railway under any Act of Parliament.

Great care is requisite in framing byelaws under this section, in order to avoid the risk of their being treated as *ultra vires*. Thus a byelaw imposing a penalty on a person beginning to build without giving a month's notice was held to be bad; and a person who has given notice of his intention to build may begin at once subject to the chance of having his building pulled down if built in contravention of the byelaws. *Hattersley v. Burr*, 14 L. T. (N. S.) 565; 12 Jur. (N. S.) 854, 14 W. R. 864: this case however is somewhat shaken by *Hall v. Nixon*, L. R. 9 Q. B. 152. In *Waite v. Garston Local Board*, L. R. 3 Q. B. 5; 37 L. J., M. C. 19; 17 L. T. (N. S.) 201, a byelaw that no dwelling-house should be erected without having at the rear or side a roadway at least twelve feet wide communicating with some adjoining public street or highway in such situation as should be approved by the Local Board, for the purpose of affording access to the privy or ashpit of the house, was held to be invalid. So too a byelaw imposing a continuing penalty in very general language. *Young v. Edwards*, 33 L. J., M. C. 227; 11 L. T. (N. S.) 424; and see *Brown v. Holyhead Local Board*, 7 L. T. (N. S.) 332; 11 W. R. 71.

Whether a wall is a building within the meaning of this section, *quære*. *Brown v. Holyhead Local Board*, *ubi supra*.

In *Marshall v. Smith*, L. R. 8 C. P. 416, a byelaw required all party walls to be nine inches thick, and it was held that allowing a party wall four and a half inches thick (for building which the appellant had been fined) to remain unaltered was not a continuing offence within a byelaw imposing a penalty for each day during which any offence against the byelaws was continued; and that if it was, the byelaw would be unreasonable, the appropriate remedy being the removal of the structure.

Under a byelaw which required that in the rear or at the side of every building there should be left an open space of not less than one hundred feet, the distance across which or between such building and the opposite property at the rear or side should be twenty-five feet,—the distance of twenty-five feet is to be measured at any and every part of the building to the opposite property, and it is not sufficient that in some part of the building there is a distance of twenty-five feet between it and the opposite property. *Anderton v. Rigby*, 32 L. J., M. C. 137, 9 Jur. (N. S.) 1058.

It must be borne in mind that byelaws cannot be made under this section to affect old buildings—*i.e.* buildings within the proviso. See *Burgess v. Peacock*, 10 Jur. (N. S.) 803, 10 L. T. (N. S.) 617; *Tucker v. Rees*, 7 Jur. (N. S.) 629; *Shiel v. Mayor etc. of Sunderland*, 6 H. and N. 796, 30 L. J., M. C. 215, and section 159 and note.

Before a building is pulled down by the urban authority an opportunity must be given to the alleged offender of being heard. *Coper v. Wandsworth District Board*, 9 Jur. (N. S.) 1155, 32 L. J., M. C. 185, 8 L. T. (N. S.) 278, decided on a section of the Metropolis Management Act.

The words "subject to the provisions of this Act" in line fifteen from the end of this section refer to section 158.

The exemption of buildings belonging to railway companies is new, but follows the precedent of the Metropolis Management Act.

The byelaws must be made and confirmed in the manner provided by sections 182-4.

As to commencement of works and removal of works made contrary to byelaws.

CLVIII. Where a notice plan or description of any work is required by any byelaw made by an urban authority to be laid before that authority, the urban authority shall, within one month after the same has been delivered or sent to their surveyor or clerk, signify in writing their approval or disapproval of the intended work to the person proposing to execute the same; and if the work is commenced after such notice of disapproval, or before the



expiration of such month without such approval, and is in any respect not in conformity with any byelaw of the urban authority, the urban authority may cause so much of the work as has been executed to be pulled down or removed.

P.H. 1874,  
ss. 41, 42,  
43.

Where an urban authority incur expenses in or about the removal of any work executed contrary to any byelaw, such authority may recover in a summary manner the amount of such expenses either from the person executing the works removed or from the person causing the works to be executed, at their discretion.

This paragraph gives the urban authority the choice of proceeding either against the builder or his employer.

As to the summary recovery of expenses, see section 251.

Where an urban authority may under this section pull down or remove any work begun or executed in contravention of any byelaw, or where the beginning or the execution of the work is an offence in respect whereof the offender is liable in respect of any byelaw to a penalty, the existence of the work during its continuance in such a form and state as to be in contravention of the byelaw shall be deemed to be a continuing offence ; but a penalty shall not be incurred in respect thereof after the expiration of one year from the day when the offence was committed or the byelaw was broken.

The continuance of the work in such a state as to be in contravention of a byelaw is made by this section a continuing offence ; it is for the urban authority by their byelaws to impose a penalty, if they think fit, in accordance with the provisions of section 183.

CLIX. For the purposes of this Act, the re-erecting of any building pulled down to or below the ground floor, or of any frame building of which only the framework is left down to the ground floor, or the conversion into a dwelling-house of any building not originally constructed for human habitation, or the conversion into more than one dwelling-house of a building originally constructed as one dwelling-house only, shall be considered the erection of a new building.

What to  
be deemed  
a new  
building.  
L.G., s. 34.

*Hobbs v. Dance*. L. R. 9 C. P. 30.

An addition to an old building is not a new building within the meaning of this section. *Sheil v. Mayor etc. of Sunderland*, 6 H. and N. 796, 30 L. J. (M. C.) 215.

CLX. The provisions of The Towns Improvement Clauses Act 1847 with respect to the following matters ; that is to say,

Incorporation of  
certain  
provisions

of 10 & 11  
 Vict. c. 34.  
 L.G., s. 45.

- (1.) With respect to naming the streets and numbering the houses ; and
  - (2.) With respect to improving the line of the streets and removing obstructions ; and
  - (3.) With respect to ruinous or dangerous buildings ; and
  - (4.) With respect to precautions during the construction and repair of the sewers streets and houses,
- shall for the purpose of regulating such matters in urban districts, be incorporated with this Act.

L.G. Am.,  
 s. 11.

Notices for alterations under the sixty-ninth, seventieth, and seventy-first sections, directions under the seventy-third section, and orders under the seventy-fourth section of the said Towns Improvement Clauses Act, may, at the option of the urban authority, be served on owners instead of occupiers, or on owners as well as occupiers, and the cost of works done under any of these sections may, when notices have been so served on owners, be recovered from owners instead of occupiers ; and when such cost is recovered from occupiers so much thereof may be deducted from the rent of the premises where the work is done as is allowed in the case of private improvement rates under this Act.

As to the interpretation of such terms as the "Special Act" etc. in the incorporated provisions, see section 316.

These incorporated provisions will be found at the end of this Act. It will be remembered that they only apply to urban districts.

As to the deduction of proportion of cost from rent, see section 214.

### *Lighting Streets, etc.*

Powers of  
 urban  
 authority  
 for light-  
 ing their  
 district.  
 12 & 13  
 Vict. c. 94.  
 s. 8.

CLXI. Any urban authority may contract with any person for the supply of gas, or other means of lighting the streets markets and public buildings in their district, and may provide such lamps lamp posts and other materials and apparatus as they may think necessary for lighting the same.

Where there is not any company or person (other than the urban authority) authorised by or in pursuance of any Act of Parliament, or any order confirmed by Parliament, to supply gas for public and private purposes, supplying gas within any part of the district of such authority, such authority may themselves undertake to supply gas for such purposes or any of them throughout the whole or any part of their district ; and if there is any such company or person so supplying gas, but the limits of supply of

such company or person include part only of the district, then the urban authority may themselves undertake to supply gas throughout any part of the district not included within such limits of supply.

Where an urban authority may under this Act themselves undertake to supply gas for the whole or any part of their district, a provisional order authorising a gas undertaking may be obtained by such authority under and subject to the provisions of The Gas and Water Works Facilities Act 1870, and any Act amending the same; and in the construction of the said Act the term "the undertakers" shall be deemed to include any such urban authority: Provided that for the purposes of this Act the Local Government Board shall throughout the said Act be deemed to be substituted for the Board of Trade.

33 & 34  
Vict. c. 70.

Under the former law an urban authority could only contract for lighting their district for a period not exceeding three years. This section removes the restriction; enables urban authorities to purchase gas undertakings by agreement; and also enables urban authorities in districts or parts of districts where there is no company or person authorised by Parliament to supply gas and supplying gas, to undertake such supply themselves, and for that purpose to obtain a provisional order under the Gas and Water Works Facilities Act, 1870, authorising a gas undertaking. The effect of this latter provision is to place local authorities on the same footing with respect to commencing and carrying on a gas undertaking as an ordinary company.

CLXII. For the purpose of supplying gas within their district or any part thereof either for public or private purposes any urban authority may (with the sanction of the Local Government Board) buy, and the directors of any gas company, in pursuance, in the case of a company registered under the Companies Act 1862, of a special resolution of the members passed in manner provided by that Act, and in the case of any other company, of a resolution passed by a majority of three-fourths in number and value of the members present, either personally or by proxy, at a meeting specially convened with notice of the business to be transacted, may sell and transfer to such authority, on such terms as may be agreed on between such authority and the company, all the rights powers and privileges and all or any of the lands premises works and other property of the company, but subject to all liabilities attached to the same at the time of such purchase.

Power for  
sale of un-  
dertaking  
of gas  
company  
to urban  
authority.

Before giving their sanction, the Local Government Board may direct an inquiry. See section 293.

As to resolutions under this section, see note to section 63.

CLXIII. Where in any place which after the passing of this Act becomes constituted or included in an urban district, or which by

Watching  
and Light-  
ing Act (3

& 4 W. IV. c. 90.) to be superseded by this Act. L.G., s. 46. *virtue of any order of the Local Government Board becomes subject to this enactment*, the Act passed in the fourth year of the reign of King William the Fourth, intituled "An Act to repeal an Act of the eleventh year of His late Majesty King George the Fourth, "for the lighting and watching of parishes in England and Wales, "and to make other provisions in lieu thereof," has been adopted the said Act shall be superseded by this Act, and all lamps lamp posts gas pipes fire engines hose and other property vested in the inspectors for the time being under the said Act shall vest in the authority having under this Act jurisdiction in such place.

The words in italics are new, and are intended to meet the case of the powers contained in this section being conferred on a rural authority under section 276. Under the Public Health Act 1872 there was a difficulty in investing a rural authority with lighting powers where the Lighting and Watching Act had been adopted, because there would then be two lighting authorities in the same place. This difficulty has now been removed by providing that if the rural authority are invested with these powers the Lighting and Watching Act shall be superseded. The watching powers contained in the Act are now superseded by the Police Acts.

#### PUBLIC PLEASURE GROUNDS, ETC.

Urban authority may provide places of public recreation. P.H., s. 74.

CLXIV. Any urban authority may purchase or take on lease lay out plant improve and maintain lands for the purpose of being used as public walks or pleasure grounds, and may support or contribute to the support of public walks or pleasure grounds provided by any person whomsoever.

Any urban authority may make byelaws for the regulation of any such public walk or pleasure ground, and may by such byelaws provide for the removal from such public walk or pleasure ground of any person infringing any such byelaw by any officer of the urban authority or constable.

This power to make byelaws for the regulation of public walks and pleasure grounds is new.

The byelaws must be made and confirmed in the manner provided by sections 182-4.

Urban authority may provide public clocks. L.G., s. 45. T.L., s. 143.

CLXV. Any urban authority may from time to time provide such clocks as they consider necessary, and cause them to be fixed on or against any public building, or, with the consent of the owner or occupier, on or against any private building the situation of which may be convenient for that purpose, and may cause the dials thereof to be lighted at night, and may from time to time



alter and remove any such clocks to such other like situation as they may consider expedient.

MARKETS AND SLAUGHTER-HOUSES.

CLXVI. Where an urban authority are a local board or improvement commissioners they shall have power, with the consent of the owners and ratepayers of their district, expressed by resolution passed in manner provided by schedule III. to this Act, and where the urban authority are a town council they shall have power, with the consent of two-thirds of their number, to do the following things, or any of them, within their district :

Urban authority may provide markets. L.G., s. 50.

To provide a market place, and construct a market house and other conveniences, for the purpose of holding markets :

To provide houses and places for weighing carts :

To make convenient approaches to such market :

To provide all such matters and things as may be necessary for the convenient use of such market :

To purchase or take on lease land, and public or private rights in markets and tolls for any of the foregoing purposes :

To take stallages rents and tolls in respect of the use by any person of such market :

But no market shall be established in pursuance of this section so as to interfere with any rights powers or privileges enjoyed within the district by any person without his consent.

The rights referred to are rights acquired adversely to the rest of the world and peculiar to the individual. *Fearon v. Mitchell*, L. R. 7 Q. B. 690, per Cockburn, C. J. See *Ellis v. Mayor etc. of Bridgnorth*, 2 J. and H. 67; 9 W. R. 331.

The consent of the owners and ratepayers must be given by resolution passed at a meeting held in conformity with the provisions of schedule III. There must therefore be a requisition of at least twenty owners and ratepayers before the meeting can be summoned. It will be observed that the consent of two-thirds of the whole number of members of a town council must be given, and not merely that of two-thirds of those present at the meeting. The minutes should show that the requisite number of members consent.

CLXVII. For the purpose of enabling any urban authority to establish or to regulate markets, there shall be incorporated with this Act the provisions of The Markets and Fairs Clauses Act 1847, in so far as the same relate to markets : that is to say,

Incorporation of provisions of 10 & 11 Viet. c. 14. as to markets. L.G., s. 50.

With respect to the holding of the market or fair, and the protection thereof ; and

With respect to the weighing goods and carts ; and

With respect to the stallages rents and tolls :  
 Provided that all tolls leviable by an urban authority in pursuance of this section shall be approved by the Local Government Board.

An urban authority may with respect to any market belonging to them make byelaws for any of the purposes mentioned in section forty-two of the Markets and Fairs Clauses Act 1847, so far as those purposes relate to markets, and printed copies of any bye-laws so made shall be conspicuously exhibited in the market.

The byelaws must be made and confirmed in the manner prescribed by sections 182-4.

These incorporated provisions will be found at the end of this Act.

As to their interpretation, see section 163.

Power for  
 sale of  
 undertak-  
 ing of  
 market  
 company  
 to urban  
 authority.  
 Ib. s. 53.

CLXVIII. Any urban authority may purchase, and the directors of any market company, in pursuance, in the case of a company registered under the Companies Act 1862, of a special resolution passed in manner provided by that Act, and in the case of any other company, of a resolution passed by a majority of three-fourths in number and value of the members present, either personally or by proxy, at a meeting specially convened with notice of the business to be transacted, may sell and transfer to any urban authority, on such terms as may be agreed on between the company and the urban authority, all the rights powers and privileges and all or any of the markets premises and things which at the time of such purchase are the property of the company, but subject to all liabilities attached to the same at the time of such purchase.

As to resolutions under this section, see note to section 63.

In the case of the purchase of the undertaking of a water or gas company, the consent of the Local Government Board is required. See sections 63 and 162. This is not so here, but if it is intended to defray the cost of the purchase by means of a loan the agreement should be made dependent on the consent of the Board being given to the loan.

Power to  
 provide  
 slaughter-  
 houses.  
 P.H., s. 62.

CLXIX. Any urban authority may, if they think fit, provide slaughter-houses, and they shall make byelaws with respect to the management and charges for the use of any slaughter-houses so provided.

For the purpose of enabling any urban authority to regulate slaughter-houses within their district the provisions of the Towns Improvement Clauses Act, 1847, with respect to slaughter-houses shall be incorporated with this Act.

Nothing in this section shall prejudice or affect any rights powers or privileges of any persons incorporated by any local Act passed

before the passing of the Public Health Act 1848, for the purpose of making and maintaining slaughter-houses.

The byelaws must be made and confirmed in the manner prescribed by sections 182-4.

These incorporated provisions will be found at the end of this Act. As to their interpretation, see section 316. See *Anthony v. Brecon Markets Company*, L. R. 7 Ex. 399.

CLXX. The owner or occupier of any slaughter-house licensed or registered under this Act shall, within one month after the licensing or registration of the premises, affix, and shall keep undefaced and legible on some conspicuous place on the premises, a notice with the words "Licensed slaughter-house," or "Registered slaughter-house," as the case may be.

Notice to be affixed on slaughter-houses. P.H. 1874, s. 49.

Any person who makes default in this respect, or who neglects or refuses to affix or renew such notice after requisition in writing from the urban authority, shall be liable to a penalty not exceeding five pounds for every such offence, and of ten shillings for every day during which such offence continues after conviction.

This latter paragraph somewhat restricts the operation of the former one. It would seem that no penalty could be recovered under this section until the notice referred to has been given.

For definition of "owner," see section 4; as to form and service of notices, sections 266 and 267; and as to the recovery and application of penalties, Part VII. Legal Proceedings.

#### POLICE REGULATIONS.

CLXXI. The provisions of The Towns Police Clauses Act 1847, with respect to the following matters, (namely,) Incorporation of certain provisions of 10 & 11 Vict. c. 89, L.G., s. 44.

- (1.) With respect to obstructions and nuisances in the streets; and
- (2.) With respect to fires; and
- (3.) With respect to places of public resort; and
- (4.) With respect to hackney carriages; and
- (5.) With respect to public bathing;

shall, for the purpose of regulating such matters in urban districts, be incorporated with this Act.

The expression in the provisions so incorporated "the superintendent constable," and the expression "any constable or other officer appointed by virtue of this or the special Act," shall, for the purposes of this Act, respectively include any superintendent of police, and any constable or officer of police acting for or in the district of any urban authority; and the expression "within the

prescribed distance" shall for the purposes of this Act mean within any urban district.

Notwithstanding anything in the provisions so incorporated, a license granted to the driver of any hackney carriage in pursuance thereof shall be in force for one year only from the date of the license, or until the next general licensing meeting where a day for such meeting is appointed.

These incorporated provisions will be found at the end of this Act.

Urban authority may make byelaws for licensing horses, boats, etc. for hire. L.G. Am., s. 25.

CLXXII. Any urban authority may license the proprietors drivers and conductors of horses ponies mules or asses standing for hire within the district in like manner and with the like incidents and consequences as in the case of proprietors and drivers of hackney carriages, and may make byelaws for regulating stands and fixing rates of hire, and as to the qualification of such drivers and conductors, and for securing their good and orderly conduct while in charge.

Any urban authority may also license the proprietors of pleasure boats and vessels, and the boatmen or other persons in charge thereof, and may make byelaws for regulating the numbering and naming of such boats and vessels, and the number of persons to be carried therein, and the mooring places for the same, and for fixing rates of hire, and the qualification of such boatmen or or other persons in charge, and for securing their good and orderly conduct while in charge.

The first part of each of these paragraphs is new. Under the old law there was no power to license the proprietors etc.; but byelaws might be made as to licensing the animals and boats. The extension of the byelaws to the qualification of the drivers boatmen etc., to the numbering and naming of the boats, and to the number of persons to be carried therein and the mooring places for the same, is also new.

The byelaws must be made and confirmed in the manner prescribed by sections 182-4.

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## PART V.

## GENERAL PROVISIONS.

## CONTRACTS.

CLXXIII. Any local authority may enter into any contracts necessary for carrying this Act into execution. Power of local authorities to contract. P.H., s. 85.

The general law applicable to contracts by corporations is discussed in *Mayor of Ludlow v. Charlton*, 6 M. and W. 821; *Henderson v. Australian Navigation Co.*, 5 E. and B. 409, 1 Jur. (N. S.) 830; *London Dock Co. v. Sinnott*, 8 El. and Bl. 347; *S. of Ireland Colliery Co. v. Waddle*, L. R. 3 C. P. 463, 4 C. P. 617; and the cases therein referred to.

For the incorporation of local boards and certain improvement commissioners under this Act, see s. 7.

CLXXIV. With respect to contracts made by an urban authority under this Act, the following regulations shall be observed; (namely,) Provisions to contracts by urban authority. P.H., s. 85.

- (1.) Every contract made by an urban authority whereof the value or amount exceeds fifty pounds shall be in writing and sealed with the common seal of such authority :

Under the Sanitary Acts contracts made by an urban authority not being a town council were obliged to be signed by five members of the authority. This is no longer necessary.

- (2.) Every such contract shall specify the work materials matters or things to be furnished had or done, the price to be paid, and the time or times within which the contract is to be performed, and shall specify some pecuniary penalty to be paid in case the terms of the contract are not duly performed :
- (3.) Before contracting for the execution of any works under the provisions of this Act, an urban authority shall obtain from their surveyor an estimate in writing, as well of the probable expense of executing the work in a substantial manner as of the annual expense of repairing the same ; also a report as to the most advantageous mode of contracting, that is to say, whether by contracting only for the execution of the work, or for executing and also maintaining the same in repair during a term of years or otherwise :

The requirements of an estimate and report are as respects third parties directory merely, and not conditions precedent to the validity of a contract; though non-compliance with them may affect the right of the urban authority to raise the sums required for purposes of the contract from their

constituents. *Nowell v. Mayor etc. of Worcester*, 9 Exch. 457; 23 L. J. Ex. 139.

If the urban authority execute a work which they have no power to repair—*e.g.*, under section 149—the provision for including the cost of the repairs in the estimate is of course inapplicable; and similarly, where the work is already in existence and only needs repair, the estimate need not include the cost of executing the work, but of its repair only. *Cunningham v. Local Board of Wolverhampton*, 26 L. J., M. C. 33; 5 W. R. 310; 7 E. & B. 114.

- (4.) Before any contract of the value or amount of one hundred pounds or upwards is entered into by an urban authority ten days' public notice at the least shall be given, expressing the nature and purpose thereof and inviting tenders for the execution of the same; and such authority shall require and take sufficient security for the due performance of the same:

This notice should be signed by the clerk, and advertised in one or more local newspapers circulating in the district.

- (5.) Every contract entered into by an urban authority in conformity with the provisions of this section, and duly executed by the other parties thereto, shall be binding on the authority by whom the same is executed and their successors and on all other parties thereto and their executors administrators successors or assigns to all intents and purposes: Provided that an urban authority may compound with any contractor or other person in respect of any penalty incurred by reason of the non-performance of any contract entered into as aforesaid, whether such penalty is mentioned in any such contract, or in any bond or otherwise, for such sums of money or other recompense as to such authority may seem proper.

There is an implied undertaking on the part of the urban authority to collect the funds necessary to pay a contractor who has done work for them. *Worthington v. Ludlow*, 8 Jur. (N. S.) 668; 8 L. T. (N. S.) 283; 31 L. J., Q. B. 131.

#### PURCHASE OF LANDS.

Power to  
purchase  
lands.  
P.H., s. 84  
L.G. Am.,  
s. 22.  
San. 1866,  
s. 47.  
P.H. 1874,  
ss. 31, 33.

CLXXV. Any local authority may for the purposes and subject to the provisions of this Act purchase or take on lease sell or exchange any lands, whether situated within or without their district; they may also buy up any water-mill dam or weir which interferes with the proper drainage of or the supply of water to their district.

Any lands acquired by a local authority in pursuance of any

powers in this Act contained and not required for the purpose for which they were acquired shall (unless the Local Government Board otherwise direct) be sold at the best price that can be gotten for the same, and the proceeds of such sale shall be applied towards discharge, by means of a sinking fund or otherwise, of any principal moneys which have been borrowed by such authority on the security of the fund or rate applicable by them for the general purposes of this Act, or if no such principal moneys are outstanding shall be carried to the account of such fund or rate.

S.U. 1865,  
s. 7.  
S.U. 1867,  
s. 4.

The sale of superfluous lands will be subject to the provisions of the Lands Clauses Acts incorporated by the following section. With the consent of the Local Government Board, however, such lands may be let. See section 177.

CLXXVI. With respect to the purchase of lands by a local authority for the purposes of this Act, the following regulations shall be observed ; (that is to say,)

Regulations as to purchase of land.  
L.G., s. 75.  
L.G. Am.,  
s. 18.  
P.H. 1874,  
s. 35.

- (1.) The Lands Clauses Consolidation Acts, 1845, 1860, and 1869, shall be incorporated with this Act, except the provisions relating to access to the special Act, and except section one hundred and twenty-seven of the Lands Clauses Consolidation Act 1845 :

Section 127 of the Act of 1845 is excepted from incorporation on the ground that the provision vesting lands remaining unsold after ten years in the owners of the lands adjoining, is inapplicable to the position and circumstances of local authorities.

As to the interpretation of such terms as the "special Act" etc., in the Lands Clauses Consolidation Acts, see section 316.

- (2.) The local authority, before putting in force any of the powers of the said Lands Clauses Consolidation Acts with respect to the purchase and taking of lands otherwise than by agreement, shall

Publish once at the least in each of three consecutive weeks in the month of November, in some local newspaper circulated in their district, an advertisement describing shortly the nature of the undertaking in respect of which the lands are proposed to be taken, naming a place where a plan of the proposed undertaking may be seen at all reasonable hours, and stating the quantity of lands that they require ; and shall further

Serve a notice in the month of December on every

owner or reputed owner, lessee or reputed lessee, and occupier of such lands, defining in each case the particular lands intended to be taken, and requiring an answer stating whether the person so served assents, dissents, or is neuter in respect of taking such lands.

A provisional order empowering a local authority to put in force the provisions of the Lands Clauses Acts with respect to the compulsory purchase of land is in effect a substitution for proceedings before a standing orders committee and cannot be interfered with by certiorari. *Frewen v. Hastings*, 11 Jur. (N.S.) 670; 34 L. J., Q. B. 159. In *Telford v. Metrop. Board of Works*, 13 Eq. 574, 41 L. J., Ch. 589, an injunction was under the circumstances granted to restrain the defendants from promoting a scheme which would have required a provisional order to bring it into operation.

As to provisional orders under this Act, sections 297, 298.

See proviso at end of section as to time of giving notices, and as to notices to commoners. The advertisements must be published in a local newspaper, and publication in London newspapers will not be a compliance with the section. When the advertisements are published, copies of the plans here referred to etc. must at the same time be deposited with the clerk to the Parliaments and at the Private Bill Office in compliance with the standing orders of the House of Lords and of the House of Commons.

- (3.) On compliance with the provisions of this section with respect to advertisements and notices, the local authority may, if they think fit, present a petition under their seal to the Local Government Board. The petition shall state the lands intended to be taken, and the purposes for which they are required, and the names of the owners lessees and occupiers of lands who have assented dissented or are neuter in respect of the taking such lands, or who have returned no answer to the notice; it shall pray that the local authority may, with reference to such lands, be allowed to put in force the powers of the said Lands Clauses Consolidation Acts with respect to the purchase and taking of lands otherwise than by agreement, and such prayer shall be supported by such evidence as the Local Government Board requires:
- (4.) On the receipt of such petition and on due proof of the proper advertisements having been published and notices served the Local Government Board shall take such petition into consideration, and may either dismiss the same, or direct a local inquiry as to the propriety of assenting to the prayer of such petition; but until such inquiry has been made no provisional order shall be made



affecting any lands without the consent of the owners lessees and occupiers thereof :

The House of Lords usually prohibit the second reading in that House of Bills for confirming provisional orders after about the middle of June. The petition to the Local Government Board should therefore be presented as early as possible after the various notices have been given, and should never be later than 31st January. The petition must be under the seal of the local authority and must comply with the requirements of subsection (3). It should be accompanied by a copy of the plans, and by a statutory declaration showing that the several advertisements and notices referred to in subsection (2) have been given, and copies of the newspapers and notices should be annexed to it as exhibits. The declaration should also state that on such and such a day copies of the plans were deposited with the clerk to the Parliaments and at the Private Bill Office, and should give the name and address of the person by whom the deposit was made.

As to the costs of the inquiry and the powers of the inspector, see sections 294, 296, and 298.

- (5.) After the completion of such inquiry the Local Government Board may, by provisional order, empower the local authority to put in force, with reference to the lands referred to in such order, the powers of the said Lands Clauses Consolidation Acts with respect to the purchase and taking of lands otherwise than by agreement, or any of them, and either absolutely or with such conditions and modifications as the Board may think fit, and it shall be the duty of the local authority to serve a copy of any order so made in the manner and on the person in which and on whom notices in respect of such lands are required to be served :

The order should be served before it is confirmed. As to the confirmation see section 297, and as to the costs of the provisional order see section 298.

Provided that the notices by this section required to be given in the months of November and December may be given in the months of September and October or of October and November, but in either of such last-mentioned cases an inquiry preliminary to the provisional order to which such notices refer, shall not be held until the expiration of one month from the last day of the second of the two months in which the notices are given ; and any notices or orders by this section required to be served on a number of persons having any right in over or on lands in common may be served on any three or more of such persons on behalf of all such persons.

CLXXVII. Any local authority may, with the consent of the Local Government Board, let for any term any lands which they may possess, as and when they can conveniently spare the same.

Power to  
let lands.  
P.H. 1874,  
s. 34.

Provision  
for lands  
belonging  
to the  
Duchy of  
Lancaster.  
P.H. 1874,  
s. 32.

CLXXVIII. The Chancellor and Council of the Duchy of Lancaster for the time being may, if they think fit, (but subject and without prejudice to the rights of any lessee tenant or occupier,) from time to time contract with any local authority for the sale of, and may (subject as aforesaid) absolutely sell and dispose of, for such sum as to the said Chancellor and Council may appear sufficient consideration, the whole or any part of any lands belonging to Her Majesty her heirs or successors in right of the said duchy, or any right interest or easement in through over or on any such lands which for the purposes of this Act such local authority from time to time deem it expedient to purchase ; and on payment of the purchase money, as provided by the Duchy of Lancaster Lands Act 1855, the said Chancellor and Council may grant and assure to the said authority, under the seal of the said duchy, in the name of Her Majesty her heirs or successors the subject of such contract or sale, and such money shall be dealt with as if such subject had been sold under the authority of The Duchy of Lancaster Lands Act 1855.

The Duchy of Lancaster Lands Act 1855 incorporates the Lands Clauses Consolidation Act.

#### ARBITRATION.

Mode of  
reference  
to arbitra-  
tion.  
P.H., s.  
123.  
S.U. 1865,  
s. 8.  
San. 1866,  
s. 9.

CLXXIX. In case of dispute as to the amount of any compensation to be made under the provisions of this Act (except where the mode of determining the same is specially provided for), and in case of any matter which by this Act is authorised or directed to be settled by arbitration, then, unless both parties concur in the appointment of a single arbitrator, each party shall appoint an arbitrator to whom the matter shall be referred.

Section 181 authorises questions where the matter in dispute is less than £20 to be determined at the option of either party by a court of summary jurisdiction.

Formerly neither party could appoint except at the request of the other. The request has now been abolished.

Regula-  
tions as to  
arbitra-  
tion.  
P.H., ss.  
123-8.

CLXXX. With respect to arbitrations under this Act, the following regulations shall be observed ; (that is to say,)

- (1.) Every appointment of an arbitrator under this Act when made on behalf of the local authority shall be under their common seal, and on behalf of any other party under his

hand, or if such party be a corporation aggregate under their common seal:

Under the Sanitary Acts the appointment made by an urban authority, when not a town council, had to be signed by five members of the authority. This is no longer necessary.

- (2) Every such appointment shall be delivered to the arbitrators, and shall be deemed a submission to arbitration by the parties making the same :
- (3.) After the making of any such appointment the same shall not be revoked without the consent of both parties, nor shall the death of either party operate as a revocation :
- (4.) If for the space of fourteen days after any matter by this Act authorised or directed to be settled by arbitration has arisen, and notice in writing by one party who has duly appointed an arbitrator has been given to the other party, stating the matter to be referred, and accompanied by a copy of such appointment, the party to whom notice is given fails to appoint an arbitrator, the arbitrator appointed by the party giving the notice shall be deemed to be appointed by and shall act on behalf of both parties :
- (5.) If before the determination of any matter so referred any arbitrator dies or refuses or becomes incapable to act, the party by whom such arbitrator was appointed may appoint in writing another person in his stead ; and if such party fails so to do for the space of seven days after notice in writing from the other party in that behalf, the remaining arbitrator may proceed *ex parte* ; and every arbitrator so appointed shall have the same powers and authorities as were vested in the arbitrator in whose stead the appointment is made :
- (6.) If a single arbitrator dies or becomes incapable to act before the making of his award, or fails to make his award within twenty-one days after his appointment, or within such extended time, if any, as may have been duly appointed by him for that purpose, the matters referred to him shall be again referred to arbitration under the provisions of this Act, as if no former reference had been made :
- (7.) Where there is more than one arbitrator, the arbitrators shall, before they enter on the reference, appoint by

writing under their hands an umpire, and if the person appointed to be umpire dies or becomes incapable to act, the arbitrators shall forthwith appoint another person in his stead; and if the arbitrators neglect or refuse to appoint an umpire for seven days after being requested so to do by any party to the arbitration, the Local Government Board shall, on the application of any such party, appoint an umpire:

Arbitrators can appoint an umpire within three months from the date of the appointment of the arbitrator last appointed, though they have not actually entered on the reference. *Holdsworth v. Wilson*, 10 Jur. (N. S.) 171; 34 L. J., Q. B. 289; 8 L. T. (N. S.) 434.

As to waiver of objection to jurisdiction of umpire, *Ringland v. Lowdnes*, 10 Jur. (N. S.) 852; 33 L. J., C. P. 337.

The Local Government Board is substituted in this sub-section for the Court of Quarter Sessions in order to obviate the delay which sometimes occurred under the old law.

- (8.) If the arbitrators fail to make their award within twenty-one days after the day on which the last of them was appointed, or within such extended time (if any) as may have been duly appointed by them for that purpose, the matters referred shall be determined by the umpire:
- (9.) The time for making an award by arbitrators under this Act shall not in any case be extended beyond the period of two months from the date of the submission, and the time for making an award by an umpire under this Act shall not in any case be extended beyond the period of two months from the date of the reference of the matters to him:

Section 126 of the Public Health Act 1848 provided that the time for making an award should not be extended beyond three months from the date of the submission or of the appointment of the umpire as the case might be; but as section 125 directed the arbitrators to appoint an umpire before entering on the reference, the result was in some cases to leave no time for the umpire to perform his duties. This sub-section cures the defect. See *Kellett v. Tranmere*, 34 L. J., Q. B. 37.

- (10.) Before any arbitrator or umpire enters on a reference under this Act he shall make and subscribe the following declaration before a justice of the peace; (that is to say,)

‘I *A.B.* do solemnly and sincerely declare that I will faithfully and honestly, and to the best of my skill and ability, hear and determine the matters referred to me under the Public Health Act 1875.

*A.B.*’



- (11.) Such declaration shall be annexed to the award when made ; and any arbitrator or umpire who wilfully acts contrary to such declaration shall be guilty of a misdemeanour :
  - (12.) Any arbitrator arbitrators or umpire appointed by virtue of this Act may require the production of such documents in the possession or power of either party as they or he may think necessary for determining the matters referred, and may examine the parties or their witnesses on oath :
  - (13.) The costs of and consequent upon the reference shall be in the discretion of the arbitrator or arbitrators, or (in case the matters referred are determined by an umpire) of the umpire :
- Holdsworth v. Wilson*, 10 Jur. (N. S.) 171 ; 34 L. J., Q. B. 289 ; 8 L. T. (N. S.) 434.
- (14.) Any submission to arbitration under the provisions of this Act may be made a rule of any of the superior courts, on the application of any party thereto :
  - (15.) The award of arbitrators or of an umpire under this Act shall be final and binding on all parties to the reference.

These last words are not so extensive as those of section 123 of the Public Health Act 1848 which made the award “binding final and conclusive upon all persons and to all intents and purposes whatsoever.”

An arbitrator who has executed an instrument as and for his award is *functus officio*, and cannot of his own authority remedy any mistake which he may have made in executing it. *Mordue v. Palmer*, 6 Ch. 22 ; 40 L. J., Ch. 8.

CLXXXI. All questions referable to arbitration under this Act may, when the amount in dispute is less than twenty pounds, be determined at the option of either party before a court of summary jurisdiction ; but the court may, if it thinks fit, require that any work in respect of which the claim of the local authority is made and the particulars of the claim be reported on to them by any competent surveyor, not being the surveyor of the local authority ; and the court may determine the amount of costs incurred in that behalf, and by whom such costs or any part of them shall be paid.

Claims under twenty pounds may be referred to court of summary jurisdiction. L.G., s. 64.

For definition of “ court of summary jurisdiction,” see section 4.

#### BYELAWS.

CLXXXII. All byelaws made by a local authority under and for the purposes of this Act shall be under their common seal ;

Authentification and altera-

tion of  
byelaws.  
P.H., s.  
115.

and any such byelaw may be altered or repealed by a subsequent byelaw made pursuant to the provisions of this Act: Provided that no byelaw made under this Act by a local authority shall be of any effect if repugnant to the laws of England or to the provisions of this Act.

Observations on the power to make byelaws, and on the necessity of local authorities keeping within the powers conferred by the statute. *R. v. Rose*, 1 Jur. (N. S.) 802; *Brown v. Local Board of Holyhead*, 7 L. T. (N. S.) 332; and see note to section 157.

Under the Public Health Act 1848 it was necessary that byelaws where they were not made by a town council should be signed by five or more members. This is no longer necessary.

Power to  
impose  
penalties  
on breach  
of byelaws.  
P.H., s.  
115.

CLXXXIII. Any local authority may, by any byelaws made by them under this Act, impose on offenders against the same such reasonable penalties as they think fit, not exceeding the sum of five pounds for each offence, and in the case of a continuing offence a further penalty not exceeding forty shillings for each day after written notice of the offence from the local authority; but all such byelaws imposing any penalty shall be so framed as to allow of the recovery of any sum less than the full amount of the penalty.

Nothing in the provisions of any Act incorporated herewith shall authorize the imposition or recovery under any byelaws made in pursuance of such provisions of any greater penalty than the penalties in this section specified.

As to the form and service of notices, see sections 266, 267.

As to the recovery and application of penalties, see Part VII. Legal Proceedings.

Confirma-  
tion of  
byelaws.  
Ib.  
P.H. 1874,  
s. 48.

CLXXXIV. Byelaws made by a local authority under this Act shall not take effect unless and until they have been submitted to and confirmed by the Local Government Board, which Board is hereby empowered to allow or disallow the same as it may think proper; nor shall any such byelaws be confirmed—

Unless notice of intention to apply for confirmation of the same has been given in one or more of the local newspapers circulated within the district to which such byelaws relate, one month at least before the making of such application; and

Unless for one month at least before any such application a copy of the proposed byelaws has been kept at the office of the local authority, and has been open during office hours thereat to the inspection of the ratepayers of the district to which such byelaws relate, without fee or reward.

The clerk of the local authority shall, on the application of any

such ratepayer, furnish him with a copy of such proposed byelaws or any part thereof, on payment of sixpence for every hundred words contained in such copy.

A byelaw required to be confirmed by the Local Government Board shall not require confirmation allowance or approval by any other authority. P.H. 1874,  
s. 46.

This last paragraph shows that byelaws made under the enactments incorporated with this Act need only be confirmed by the Local Government Board.

Confirmation does not render valid a byelaw which it was beyond the power of the local authority to make. *R. v. Rose*, 1 Jur. (N. S.) 802.

The byelaws should be submitted in draft to the Local Government Board before the advertisement is issued. See in App. III. the instructions in relation to byelaws issued by the Local Government Board. The advertisement is now expressly required to be published in a *local* newspaper.

CLXXXV. All byelaws made by a local authority under this Act, or for purposes the same as or similar to those of this Act under any local Act, shall be printed and hung up in the office of such authority; and a copy thereof shall be delivered to any ratepayer of the district to which such byelaws relate, on his application for the same; a copy of any byelaws made by a rural authority shall also be transmitted to the overseers of every parish to which such byelaws relate, to be deposited with the public documents of the parish, and to be open to the inspection of any ratepayer of the parish at all reasonable hours. Byelaws to  
be printed,  
etc.  
P.H., s.  
115.  
P.H. 1874,  
s. 48.

CLXXXVI. A copy of any byelaws made under this Act by a local authority (not being the council of a borough), signed and certified by the clerk of such authority to be a true copy and to have been duly confirmed, shall be evidence until the contrary is proved in all legal proceedings of the due making confirmation and existence of such byelaws without further or other proof. Evidence  
of byelaws.

This section is new. A similar provision already exists with respect to byelaws made by town councils. 36 and 37 Vict. c. 33.

CLXXXVII. Byelaws made by the council of any borough under the provisions of section ninety of the Act of the sixth year of King William the Fourth, chapter seventy-six, for the prevention and suppression of certain nuisances, shall not be required to be sent to a Secretary of State, nor shall they be subject to the disallowance in that section mentioned; but all the provisions of this Act relating to byelaws shall apply to the byelaws so made as if they were made under this Act. Byelaws  
made  
under s.  
90 of 5 &  
6 W. IV.  
c. 76. to be  
submitted  
to Local  
Govern-  
ment  
Board.  
P.H. 1874,  
s. 46.

As to regulations of local authority.

CLXXXVIII. The provisions of this Act relating to byelaws shall not apply to any regulations which a local authority is by this Act authorised to make ; nevertheless, any local authority may cause any regulations made by them under this Act to be published in such manner as they see fit.

Regulations may be made by local authorities under sections 125, 189, 200, and 202. They will not require confirmation, and the local authority, unless expressly empowered, cannot impose any penalty by them.

#### OFFICERS AND CONDUCT OF BUSINESS OF LOCAL AUTHORITIES.

##### *Officers of Local Authorities.*

Appointment of officers of urban authority.  
P.H., s. 37.  
P.H. 1872,  
s. 10.

CLXXXIX. Every urban authority shall from time to time appoint fit and proper persons to be medical officer of health, surveyor, inspector of nuisances, clerk, and treasurer : Provided that if any such authority is empowered by any other Act in force within their district to appoint any such officer, this enactment shall be deemed to be satisfied by the employment under this Act of the officer so appointed, with such additional remuneration as they think fit, and no second appointment shall be made under this Act. Every urban authority shall also appoint or employ such assistants collectors and other officers and servants as may be necessary and proper for the efficient execution of this Act, and may make regulations with respect to the duties and conduct of the officers and servants so appointed or employed.

Under section 12 of the Public Health Act 1872, where a town council was prior to the passing of that Act also a Local Board, and as such Local Board had a separate clerk, it was provided that this clerk should continue to act for them in sanitary matters, but that on the office becoming vacant it should not be filled up, but the town clerk should discharge these duties. This arrangement is continued by the Act. See section 318. But this section provides that in future a town council shall not appoint a separate clerk for sanitary business.

The same rule applies to improvement commissioners.

The rules made by local authorities as to the duties or conduct of these officers had formerly to be made by byelaws. This is no longer the case. It is obvious that there is no necessity for imposing a penalty for the non-performance by an officer of his duty—as he can always be dismissed.

Subject, in the case of officers any portion of whose salary is paid out of moneys voted by Parliament, to the powers of the Local Government Board under this Act, the urban authority may pay to the officers and servants so appointed or employed such reasonable salaries wages or allowances as the urban authority may think proper ; and, subject as aforesaid, every such officer and



servant appointed under this Act shall be removable by the urban authority at their pleasure.

For these powers of the Local Government Board see section 191.

An action lies against a corporation for a salary which the corporation are authorised to pay out of rates raised by them. *Hall v. Taylor*, 27 L. J., Q. B. 311. In *Ex-parte Mellish*, 8 L. T. (N. S.) 47, a local Act authorised the payment "of a reasonable salary" to the clerk, and it was held that the trustees under the Act had no power to award him a special gratuity out of rates.

There is no power under the Act to give superannuation allowanees to any official of a local authority.

CXC. Every rural authority shall from time to time appoint fit and proper persons to be medical officer or officers of health, and inspector or inspectors of nuisances; they shall also appoint such assistants and other officers and servants as may be necessary and proper for the efficient execution of this Act.

Appoint-  
ment of  
officers of  
rural au-  
thority.  
P.H. 1872,  
s. 10.

There may be awarded to the clerk and treasurer of the guardians of any union, in respect of the additional duties of such officers under this Act, such remuneration as the rural authority may, with the approval of the Local Government Board, determine. If the clerk of the union is unable or unwilling to undertake such additional duties, the assistant clerk of the union shall be appointed to discharge the same, with such remuneration as afore-said.

P.H. 1874,  
s. 6.

In the event of there being no assistant clerk, one must be appointed and then those duties can be assigned to him.

The clerk and treasurer of the guardians will act as their clerk and treasurer in their capacity of rural authority as a matter of course, without any separate appointment.

CXCI. A person shall not be appointed medical officer of health under this Act unless he is a legally qualified medical practitioner; and the Local Government Board shall have the same powers as it has in the case of a district medical officer of a union with regard to the qualification appointment duties salary and tenure of office of a medical officer of health or other officer of a local authority any portion of whose salary is paid out of moneys voted by Parliament, and may by order prescribe the qualification and duties of other medical officers of health appointed under this Act.

As to  
medical  
officer of  
health, etc.  
P.H., s. 40.  
P.H. 1872,  
s. 10.  
P.H. 1874,  
s. 5.

Under the Public Health Act 1872, which rendered the appointment of medical officers of health compulsory, the Local Government Board had not power to prescribe their duties unless part of the salary was paid out of moneys voted by Parliament; the result being considerable uncertainty and want of uniformity of practice. This section empowers the Board to prescribe the qualification and duties of all medical officers appointed under the Act, though it does not interfere with officers already appointed under the Sanitary Acts.

For the regulations issued by the Board as to the duties of medical officers of health and inspectors of nuisances any part of whose salary is repaid out of moneys voted by Parliament, see Appendix III. Where the appointments are made under these regulations, one-half of the salary is paid by the Local Government Board.

The same person may, with the sanction of the Local Government Board, be appointed medical officer of health or inspector of nuisances for two or more districts, by the local authorities of such districts ; and the Local Government Board shall by order prescribe the mode of such appointment and the proportions in which the expenses of such appointment and the salary and charges of such officer shall be borne by such authorities.

Any district medical officer of a union may, with the sanction of the Local Government Board and subject to such conditions as the said Board may prescribe, be appointed a medical officer of health ; and a medical officer of health may exercise any of the powers with which an inspector of nuisances is invested by this Act.

The express power here given to the Board to impose conditions on the appointment of a district medical officer as a medical officer of health is new, although it was probably implied before. The conditions will be probably the performance of the duties prescribed in the Regulations given in the Appendix.

In case of illness or incapacity of the medical officer of health a local authority may appoint and pay a deputy medical officer, subject to the approval of the Local Government Board.

This last paragraph is new.

The deputy will be able to exercise the statutory powers conferred on the medical officer of health.

Offices  
tenable  
by same  
persons.  
P.H., s. 37.

CXCII. The same person may be both surveyor and inspector of nuisances ; but neither the person holding the office of treasurer, nor his partner, nor any person in the service or employ of them or either of them, shall be eligible to hold or shall in any manner assist or officiate in the office of clerk ; and neither the person holding the office of clerk, nor his partner, nor any person in the service or employ of them or either of them, shall be eligible to hold or shall in any manner assist or officiate in the office of treasurer.

Any person offending against this enactment shall forfeit and pay the sum of one hundred pounds, which may be recovered by any person, with full costs of suit, by action of debt.

CXCIII. Officers or servants appointed or employed under this Act by the local authority shall not in anywise be concerned or interested in any bargain or contract made with such authority for any of the purposes of this Act.

Officers not to contract with local authority. P. H., s. 38.

If any such officer or servant is so concerned or interested, or, under colour of his office or employment, exacts or accepts any fee or reward whatsoever other than his proper salary wages and allowances, he shall be incapable of afterwards holding or continuing in any office or employment under this Act, and shall forfeit and pay the sum of fifty pounds, which may be recovered by any person, with full costs of suit, by action of debt.

CXCIV. Before any officer or servant of a local authority enters on any office or employment under this Act by reason whereof he will or may be intrusted with the custody or control of money, the local authority by whom he is appointed shall take from him sufficient security for the faithful execution of such office or employment, and for duly accounting for all moneys which may be intrusted to him by reason thereof.

Officers intrusted with money to give security. Ib. s. 39.

As to the recovery and application of penalties, see Part VII. Legal Proceedings.

CXCV. Every officer and servant appointed or employed under this Act by a local authority shall, when and in such manner as may be required by such authority, make out and deliver to them a true and perfect account in writing of all moneys received by him for the purposes of this Act, stating how, and to whom, and for what purpose such moneys have been disposed of, and shall, together with such account, deliver the vouchers or receipts for all payments made by him, and pay over to the treasurer all moneys owing by him on the balance of accounts.

Officers to account. Ib.

And every such officer or servant employed in the collection of any rate made under this Act shall, within seven days after he has received any moneys on account of any such rate, pay over the same to the treasurer, and shall, as and when the local authority may direct, deliver a list signed by him and containing the names of all persons who have neglected or refused to pay any such rate, and the sums respectively due from them.

As to the power of the auditor to audit the accounts of officers of the local authority, see section 250.

Summary  
proceed-  
ings  
against  
defaulting  
officers.  
P.H., s. 39.

CXCVI. If any officer or servant appointed or employed under this Act by a local authority—

Fails to render accounts, or to produce and deliver up vouchers and receipts, or to pay over any moneys, as and when required by this Act, or

Fails within five days after written notice in that behalf from the local authority to deliver up to the local authority all books papers writings property and things in his possession or power relating to the execution of this Act, or belonging to such authority,

the local authority may complain to any justice, and such justice shall thereupon summon the party charged to appear before a court of summary jurisdiction.

On the appearance of the party charged, or on proof that the summons was personally served on him, or left at his last known place of abode or business, if it appears to the court that he has failed to render any such accounts, or to pay over such moneys, or to produce and deliver up any such vouchers or receipts books papers writings property or things as aforesaid in accordance with the provisions of this Act, and that he still fails or refuses so to do, the court may commit the offender to gaol, there to remain without bail until he has rendered such accounts, paid over such moneys, and produced and delivered up all such vouchers receipts books papers writings property and things in respect of which the charge was made : Provided that a person shall not be imprisoned under this section for a period exceeding six months.

No proceeding under this section shall be construed to relieve or discharge any surety of the offender from any liability whatever.

See *Mayer v. Harding*, 17 L. T. (N.S.) 140.

The extension of sections 192-6 to the officers of rural authorities is new. They will of course only apply to such of the officers as are appointed for the purposes of this Act.

### *Mode of conducting Business.*

Urban  
authority  
to provide  
offices.  
P.H., s. 35.

CXCVII. Every urban authority shall from time to time provide and maintain such offices as may be necessary for transacting their business, and that of their officers and servants under this Act.

This power only extends to such offices as are required for the business of the sanitary authorities. It does not enable them therefore to provide a Town



Hall. The Bill as introduced contained a clause conferring this power, but it was struck out in the House of Commons.

CXCVIII. Where an urban authority are the council of a borough, they shall, subject to the provisions of this Act, exercise and execute their powers authorities and duties under this Act according to the laws for the time being in force with respect to municipal corporations in England.

Proceedings, etc. of urban authority being the council of a borough. See P.H., s. 12.

“Subject to the provisions of this Act”—*e.g.* to section 200—under which a town council can, if they think fit, appoint an executive committee for any of the purposes of the Act, without its being necessary for the acts of a committee so appointed to be submitted to the council for approval under section 70 of the Municipal Corporations Act (5 & 6 W. IV., c. 76).

CXCIX. Every urban authority (not being the council of a borough) shall hold an annual meeting, and other meetings for the transaction of business under this Act once at least in each month, and at such other times as may be necessary for properly executing their powers and duties under this Act.

Meetings etc. of urban authority not being the council of a borough. P.H., s. 34.

Meetings of local boards shall be held and the proceedings thereat shall be conducted in accordance with the rules as to meetings and proceedings contained in Schedule I. to this Act; and any Improvement Commissioners may, if they think fit, adopt all or any of such rules.

In the case of a local board, the annual meeting must be held as soon as may be after 15th April; and the chairman for the year must be chosen at the meeting. See schedule I., rules 3 and 11.

CC. Every urban authority may from time to time appoint out of their own number so many persons as they may think fit, for any purposes of this Act which in the opinion of such authority would be better regulated and managed by means of a committee: Provided that a committee so appointed shall in no case be authorised to borrow any money, to make any rate, or to enter into any contract, and shall be subject to any regulations and restrictions which may be imposed by the authority that formed it.

Power of urban authority to appoint committees. *Ib.* s. 36, and see N. R. 1855, s. 5.

Under the Local Government Acts a committee might be appointed by an urban authority, but its acts required confirmation by the authority. Under the Nuisances Removal Acts no such confirmation was required. This section takes a middle course. The proceedings of the committee will not necessarily require confirmation, but the authority may impose this restriction if they think fit to do so.

CCI. A rural authority may at any meeting specially convened for the purpose, delegate for the current year of their office all their powers to a committee consisting wholly of their own members;

Power of rural authority to delegate

their  
powers  
and  
duties to a  
committee  
P.H. 1872,  
s. 13.

provided that one-third at least of such committee shall consist of ex-officio guardians, but in case an adequate number of such ex-officio guardians does not exist, then the number deficient shall be made up of elected guardians ; and any such committee shall have the powers by this Act vested in the rural authority by which it was formed, and shall be deemed to be during such year of office as aforesaid the rural authority of the district.

For the power of rural authorities to form parochial committees, see the next section.

Power of  
rural  
authority  
to form  
parochial  
commit-  
tees.  
Ib.  
P.H. 1874,  
s. 7.

CCII. A rural authority (including any committee so formed as aforesaid) may, at any meeting specially convened for the purpose, form for any contributory place within their district a parochial committee consisting wholly of members of such authority or committee, or partly of such members and partly of such other persons liable to contribute to the rate levied for the relief of the poor in such contributory place, and qualified in such other manner (if any) as the authority forming such parochial committee may determine.

A rural authority (including any committee so formed as aforesaid) may from time to time add too or diminish the number of the members, or otherwise alter the constitution of any parochial committee formed by it, or dissolve any parochial committee.

A parochial committee shall be subject to any regulations and restrictions which may be imposed by the authority which formed it: Provided that no jurisdiction shall be given to a parochial committee beyond the limits of the contributory place for which it is formed, and that no powers shall be delegated to a parochial committee except powers which the rural authority could exercise within such contributory place.

A parochial committee shall be deemed to be the agents of the authority which formed it, and the appointment of such committee shall not relieve that authority from any obligation imposed on it by Act of Parliament or otherwise.

A parochial committee may be empowered by the authority which formed it to incur expenses to an amount not exceeding such amount as may be prescribed by such authority ; it shall report its expenditure to such authority as and when directed by such authority, and the amount so reported, if legally incurred, shall be discharged by such authority.

The annual report of the Local Government Board for the year 1872-3.

contains a statement of the views of the Board as to the duties which may properly be delegated to a parochial committee. They are :—

1. To inspect their district from time to time with a view of ascertaining whether any works of construction are required, or any nuisances exist which should be abated.
2. To superintend the execution and maintenance of any works which may be required or have been provided for the special use of the district, and to give directions for any repairs or other matters requiring immediate attention in relation to such works which fall within the reasonable scope of the authority which they possess as agents of the sanitary authority.
3. To consider complaints of any nuisances and the action of the medical officer of health or inspector of nuisances thereon, and to inform those officers of any nuisances requiring their attention, and to give such directions for the abatement of the same in cases of urgency as the circumstances may seem to require.
4. To examine and certify all accounts relating to expenditure chargeable as special expenses within their district.
5. To report to the sanitary authority from time to time the several matters requiring their attention, and the manner in which their officers and servants have discharged their duties.

A parochial committee cannot however appoint officers or issue precepts for contributions for expenses. Second Annual Report of the Local Government Board, p. xlii.

CCIII. Any casual vacancy occurring by death resignation disqualification or otherwise in any committee may be filled up within six weeks, by the authority which formed such committee, out of qualified persons.

This power is new.

Casual vacancies in committees may be filled.

CCIV. Meetings of any committee appointed under this Act shall be held, and the proceedings thereat shall be conducted (so far as such meetings and proceedings are not regulated by the authority appointing the committee), in accordance with the rules as to meetings and proceedings contained in schedule I. to this Act.

Meetings and proceedings of committees. P.H. 1872, s. 13.

CCV. Inspectors of the Local Government Board may attend any meetings of a rural authority or of an urban authority (being a local board) when and as directed by the Local Government Board.

Inspectors may attend meetings of certain authorities Ib. s. 15.

The local authority of the district of Oxford shall not, for the purposes of this section, be deemed to be a local board.

CCVI. Every local authority shall make an annual report, in such form and at such time as the Local Government Board may from time to time direct, of all works executed, and of all sums received and disbursements made by them under and for the purposes of this Act during the preceding year, and shall send a copy to the Local Government Board: An urban authority shall also publish a copy in some local newspaper circulating in their district.

Local authority to report. L.G., s. 76.

This section is extended to rural authorities.



## PART VI.

## RATING AND BORROWING POWERS, ETC.

## EXPENSES OF URBAN AUTHORITY AND URBAN RATES.

See pp. 13, 22.

Mode of  
defraying  
expenses  
of urban  
authority.  
P.H. 1872,  
s. 16.  
P.H. 1874,  
s. 8.  
(P.H., s.  
87.)

CCVII. All expenses incurred or payable by an urban authority in the execution of this Act, and not otherwise provided for, shall be charged on and defrayed out of the district fund and general district rate leviable by them under this Act, subject to the following exceptions ; (namely,)

That if in any district the expenses incurred by an urban authority (being the council of a borough) in the execution of the Sanitary Acts were at the time of the passing of this Act payable out of the borough fund or borough rate, then the expenses incurred by that authority in the execution of this Act shall be charged on and defrayed out of the borough fund or borough rate ; and

That if in any district the expenses incurred by an urban authority (being improvement commissioners) in the execution of the Sanitary Acts were at the time of the passing of this Act payable out of any rate in the nature of a general district rate leviable by them as such commissioners throughout the whole of their district, then the expenses incurred by that authority in the execution of this Act shall be charged on and defrayed out of such rate ; and for the purposes of this section the council of the borough of Folkestone shall be deemed to be improvement commissioners ; and

That where at the time of the passing of this Act the expenses incurred by an urban authority in the execution of certain purposes of the Sanitary Acts were payable out of the borough fund and borough rate, and the expenses incurred by such authority in the execution of the other purposes of the said Acts were payable out of a rate or rates leviable by that authority throughout the whole of their district for paving sewerage or other sanitary purposes, then the expenses incurred by that authority in the execution of the same or similar purposes respectively under this Act shall respectively be charged on and defrayed out of the borough fund and borough rate, and out of the rate or rates leviable as aforesaid.



CCVIII. Where at the time of the passing of this Act the expenses incurred by an urban authority for sanitary purposes are payable otherwise than in the manner provided by the Local Government Acts, the Local Government Board may, on the application of such authority, or of any ten persons rated to the relief of the poor within the district, declare by provisional order that the expenses of such authority incurred in the execution of this Act shall be defrayed out of a district fund and general district rate to be levied by them under this Act, subject to the provisions of this Act with respect to the mode of defraying in certain cases the expenses of the repair of highways.

Power in certain cases by provisional order to alter mode.  
P.H. 1874,  
s. 9.

As to the expenses of repair of highways, see sections 216, 217; and as to provisional orders, see sections 297 and 298.

#### *General District Rate.*

CCIX. In the district of every urban authority whose expenses under this Act are directed to be defrayed out of the district fund and general district rate there shall be continued or established a fund called the district fund: a separate account called "the district fund account" of all moneys carried under this Act to the account of that fund shall be kept by the treasurer of the urban authority; and such moneys shall be applied by the urban authority in defraying such of the expenses chargeable thereon under this Act as they may think proper.

District fund account.  
P.H., s. 87.

Whether rates can be applied by local authorities in defraying the costs of legal or parliamentary proceedings undertaken by them without any express statutory authority, depends on the nature and circumstances of each case; but it must be clearly shown that the expenditure is for the benefit of the rate-payers. See *Workshop Local Board v. Marri's*, 28 L. T. 266; *A. G. v. Mayor etc. of Wigan*, Kay 268; 5 De G. M. and G. 52; 23 L. J. Ch. 429.

And as to expenses incurred by local authorities in promoting or opposing bills in parliament, see 35 & 36 Vict. c. 91, printed in Appendix II.

CCX. For the purpose of defraying any expenses chargeable on the district fund which that fund is insufficient to meet, the urban authority shall from time to time, as occasion may require, make by writing under their common seal, and levy in addition to any other rate leviable by them under this Act, a rate or rates to be called "general district rates."

Making general district rate.  
Ib. s. 89.

Any such rate may be made and levied either prospectively in order to raise money for the payment of future charges and expenses, or retrospectively in order to raise money for the payment of charges and expenses incurred at any time within six months

Ib. s. 89.  
L.G., s. 54.  
(4.)

before the making of the rate : in calculating the period of six months during which the rate may be made retrospectively, the time during which any appeal or other proceeding relating to such rate is pending shall be excluded.

L.G., s. 99. Public notice of intention to make any such rate, and of the time when it is intended to make the same, and of the place where a statement of the proposed rate is deposited for inspection, shall be given by the urban authority in the week immediately before the day on which the rate is intended to be made, and at least seven days previously thereto ; but in case of proceedings to levy or recover any rate it shall not be necessary to prove that such notice was given.

Past and future expenses may be provided for in the same rate, so long as the different items are sufficiently specified in the estimate. *R. v. Local Board of Workson*, 11 Jur. (N. S.) 1015 ; 34 L. J., M. C. 220. In *Ward v. Lowdnes*, 5 Jur. (N. S.) 1124 ; 28 L. J., Q. B. 265 ; 8 W. R. 81 ; it was held that a rate might be levied retrospectively to defray a debt incurred by improvement commissioners whose powers and duties had been transferred to a local board though more than the six months had elapsed.

As to *mandamus* to levy a rate retrospectively and the calculation of the period of six months, see *R. v. Rotherham Local Board*, 4 Jur. (N. S.) 261 ; 27 L. J., Q. B. 156 ; *Burland v. Mayor etc. of Hull*, 9 Jur. (N. S.) 275 ; 32 L. J., Q. B. 17 ; 7 L. T. (N. S.) 316 ; *Worthington v. Hulton*, L. R. 1 Q. B. 63 ; 11 Jur. (N. S.) 84 ; 35 L. J., Q. B. 61 ; *Ringland v. Lowdnes*, 10 Jur. (N. S.) 84 ; 33 L. J., C. P. 25.

Assessment, etc.  
of general  
district  
rate.  
L.G., s. 55.  
P.H., s. 89.

CCXI. With respect to the assessment and levying of general district rates under this Act the following provisions shall have effect ; (namely,)

- (1). General district rates shall be made and levied on the occupier of all kinds of property for the time being by law assessable to any rate for the relief of the poor, and shall be assessed on the full net annual value of such property, ascertained by the valuation list for the time being in force, or, if there is none, by the rate for the relief of the poor made next before the making of the assessment under this Act, subject to the following exceptions regulations and conditions ; (namely,)

(a.) The owner, instead of the occupier, may at the option of the urban authority be rated in cases—

Where the rateable value of any premises liable to assessment under this Act does not exceed the sum of ten pounds ; or

Where any premises so liable are let to weekly or monthly tenants ; or

Where any premises so liable are let in separate apartments, or where the rents become payable or are collected at any shorter period than quarterly :

Provided that in cases where the owner is rated instead of the occupier he shall be assessed on such reduced estimate as the urban authority deem reasonable of the net annual value, not being less than two-thirds nor more than four-fifths of the net annual value ; and where such reduced estimate is in respect of tenements whether occupied or unoccupied, then such assessment may be made on one-half of the amount at which such tenement would be liable to be rated if the same were occupied and the rate were levied on the occupiers :

Property cannot be assessed to a general district rate unless there is some person having such an occupation as would make him liable to the poor rate in respect thereof. *Hodgson v. Carlisle Local Board*, 4 Jur. (N. S.) 160.

It is to be observed that the valuation list is made conclusive for the assessment, the option given to the urban authority by section 56 of the Local Government Act 1858 being omitted.

- (b.) The owner of any tithes, or of any tithe commutation rentcharge, or the occupier of any land used as arable meadow or pasture ground only, or as woodlands market gardens or nursery grounds, and the occupier of any land covered with water, or used only as a canal or towing-path for the same, or as a railway constructed under the powers of any Act of Parliament for public conveyance, shall be assessed in respect of the same in the proportion of one-fourth part only of such net annual value thereof :

Docks are within the description of "land covered with water," and a dock-railway open to the public on payment of tolls is within the terms of this proviso. *R. v. Newport Dock Co.*, 31 L. J., M. C. 266 ; 6 L. T. (N. S.) 457. So are filter beds, but not land occupied by pipes mains etc., used for supply of water. *E. London Waterworks Co. v. Leyton Sewer Authority*, L. R. 6 Q. B. 669 ; *R. v. Birm. Waterworks Co.*, 1 B. and S. 84.

As to the meaning of land used "as a railway," *S. Wales R. Co. v. Swansea Local Board*, 1 Jur. (N. S.) 326 ; *R. v. Tuff Vale R. Co.*, 22 J. P. 21. A railway originally constructed without parliamentary powers, though afterwards sold to a parliamentary railway company and enlarged and used for public traffic, is not within the exception. *N. E. R. Co. v. Hadgate Local Board*, L. R. 5 Q. B. 157 ; 39 L. J., M. C. 65.

- (c.) If within any urban district or part of such district any kind of property is exempted from rating

by any local Act in respect of all or any of the purposes for which general district rates may be made under this Act, the same kind of property shall, in respect of the same purposes, and to the same extent within the parts to which the exemption applies (but not further or otherwise), be exempt from assessment to any general district rates under this Act unless the Local Government Board by provisional order otherwise direct.

The exemption refers only to the *kind* and not to the *locality* of the property. *R. v. Pontey, R. v. Shortland*, 4 Jur. (N. S.) 1234; 27 L. J., M. C. 299; 6 W. R. 34.

- (2.) If at the time of making any general district rate any premises in respect of which the rate may be made are unoccupied, such premises shall be included in the rate, but the rate shall not be charged on any person in respect of the same while they continue to be unoccupied; and if any such premises are afterwards occupied during any part of the period for which the rate was made and before the same has been fully paid, the name of the incoming tenant shall be inserted in the rate, and thereupon so much of the rate as at the commencement of his tenancy may be in proportion to the remainder of the said period shall be collected recovered and paid in the same manner in all respects as if the premises had been occupied at the time when the rate was made:
- (3.) If any owner or occupier assessed or liable to any such rate ceases to be owner or occupier of the premises in respect whereof he is so assessed or liable, before the end of the period for which the rate was made, and before the same is fully paid off, he shall be liable to pay only such part of the rate as may be in proportion to the time during which he continues to be such owner or occupier; and in every such case if any person afterwards become owner or occupier of the premises during part of the said period, he shall pay such part of the rate as may be in proportion to the time during which he continues to be such owner or occupier, and the same shall be recovered from him in the same manner as if he had been originally assessed or liable:



- (4.) The urban authority may divide their district or any street therein into parts for all or any of the purposes of this Act, and from time to time abolish or alter any such divisions, and may make a separate assessment on any such part for all or any of the purposes for which the same is formed ; and every such part, so far as relates to the purposes in respect of which such separate assessment is made, shall be exempt from any other assessment under this Act : Provided that if any expenses are incurred or to be incurred in respect of two or more parts in common the same shall be apportioned between them in a fair and equitable manner.

The express power to abolish the division made under this enactment is new.

CCXII. For the purpose of assessing general district rates any person appointed by the urban authority may inspect take copies of or make extracts from any valuation list or rate for the relief of the poor within the district, or any book relating to the same.

Inspection of poor rate books for purposes of assessment. L.G., s. 56.

Any officer having the custody of any such rate or book who refuses to permit such inspection, or the taking of such copies or extract, shall be liable to a penalty not exceeding five pounds.

*Private Improvement Rate.*

CCXIII. Whenever an urban authority have incurred or become liable to any expenses which by this Act are or by such authority may be declared to be private improvement expenses, such authority may, if they think fit, make and levy on the occupier of the premises in respect of which the expenses have been incurred, in addition to all other rates, a rate or rates to be called private improvement rates, of such amount as will be sufficient to discharge such expenses, together with interest thereon at a rate not exceeding five pounds per centum per annum, in such period not exceeding thirty years as the urban authority may in each case determine.

Power to make private improvement rates. P.H., s. 90.

Provided that whenever any premises in respect of which any private improvement rate is made become unoccupied before the expiration of the period for which the rate was made, or before the same is fully paid off, such rate shall become a charge on and be paid by the owner for the time being of the premises so long as the same continue to be unoccupied.

Publication of private improvement rates is not required, see s. 222 *ad fin.*

Proportion of private improvement rate may be deducted from rent. P.H., s. 91.

CCXIV. Where the occupier by whom any private improvement rate is paid holds the premises in respect of which the rate is made at a rent not less than the rackrent, he shall be entitled to deduct three-fourths of the amount paid by him on account of such rate from the rent payable by him to his landlord, and if he hold at a rent less than the rackrent he shall be entitled to deduct from the rent so payable by him such proportion of three-fourths of the rate as his rent bears to the rackrent; and if the landlord from whose rent any deduction is so made is himself liable to the payment of rent for the premises in respect of which the deduction is made, and holds the same for a term of which less than twenty years is unexpired (but not otherwise), he may deduct from the rent so payable by him such proportion of the sum deducted from the rent payable to him as the rent payable by him bears to the rent payable to him, and so in succession with respect to every landlord (holding for a term of which less than twenty years is unexpired) of the same premises both receiving and liable to pay rent in respect thereof.

Provided that nothing in this section shall be construed to entitle any person to deduct from the rent payable by him more than the whole sum deducted from the rent payable to him.

This section must be read as subject to the provision in section 226.

Redemption of private improvement rates. P.H., s. 92.

CCXV. At any time before the expiration of the period for which any private improvement rate is made, the owner or occupier of the premises assessed thereto may redeem the same, by paying to the urban authority the expenses in respect of which the rate was made, or such part thereof as may not have been defrayed by sums already levied in respect of the same:

Provided that money paid in redemption of any private improvement rate shall not be applied by the urban authority otherwise than in defraying expenses incurred by them in works of private improvement or in discharging the principal of any moneys borrowed by them to meet those expenses, whether by means of a sinking fund or otherwise.

This proviso is new.

Section 232 enables a rural authority to make and levy private improvement rates, subject to the foregoing provisions.

*Highway Rate.*

CCXVI. In any urban district where the expenses under this Act of the urban authority are charged on and defrayed out of the district fund and general district rates, and no other mode of providing for repair of highways is directed by any local Act, the cost of repair of highways shall be defrayed as follows ; (that is to say,)

Costs of repairs of highways.  
L.G., s. 37.

- (1.) Where the whole of the district is rated for works of paving water supply and sewerage, or for works for such of these purposes as are provided for in the district, the cost of repair of highways shall be defrayed out of the general district rate :

As to the general district rate, section 209 sqq.: under section 211 (4) the district may be divided into parts for rating purposes.

- (2.) Where parts of the district are not rated for works of paving water supply and sewerage, or for such of these purposes as are provided for in the district, the cost of repair of highways in those parts shall be defrayed out of a highway rate to be separately assessed and levied in those parts by the urban authority as surveyor of highways, and the cost of such repair in the residue of the district shall be defrayed out of the general district rate :

Section 144 makes the urban authority surveyor of highways within their district, and the highway rate mentioned in this section will be made and levied according to the provisions of the Highway Acts qualified by section 217.

- (3.) Where no public works of paving water supply and sewerage are established in the district, the cost of repair of highways in the district shall be defrayed out of a highway rate, to be levied throughout the whole district by the urban authority as surveyor of highways :

Where public works of paving etc. have been established, but no rate is levied in respect of them, the cost of repairs of highways must be defrayed out of a highway rate.

Provided that where part of a parish is included within an urban district, and the excluded part was, before the constitution of that district, liable to contribute to the highway rates for such parish, such excluded part shall (unless in the case of an urban district constituted before the passing of this Act a resolution deciding that

L.G. Am.,  
s. 9.  
27 & 28  
Vict.  
c. 101. s.  
5.

such excluded part should be formed into a separate highway district has been passed in pursuance of the Local Government Act 1858 Amendment Act 1861, or unless such excluded part has been included in a highway district under the Highway Acts,) for all purposes connected with the repairs of highways and the payment of highway rates, be considered to be and be treated as forming part of such district.

Provided also that in the case of an urban district constituted after the passing of this Act a meeting of owners and ratepayers of the excluded part (to be convened and conducted in the manner provided by schedule III. to this Act) may decide that such excluded part shall be a highway parish, and thereupon the excluded part shall for all purposes connected with highways surveyors of highways and highway rates, be considered and treated as a parish maintaining its own highways; but the requisition for holding any such meeting shall be made within six months after the constitution of the urban district.

The court of quarter sessions may by order direct that for any such excluded part a waywarden or waywardens shall be elected, and may invest any waywarden elected in pursuance of any such order with all or any of the powers of waywardens under the Highway Acts.

In order to understand this somewhat complicated provision it is necessary to refer to previous enactments. Section 9 of the Local Government Amendment Act 1861, repealing subsection (4) of section 37 of the Local Government Act 1858, enacted that where part of a parish was included in an urban [local government] district, the excluded part if then liable to contribute to the highway rates of such parish should for all highway purposes be treated as part of the urban district, subject to this qualification—that a meeting of ratepayers of the excluded part might pass a resolution determining that it should form a separate highway district and manage its own highways.

In the following year the Highway Act 1862 was passed containing provisions for the formation of highway districts, and in forming such districts difficulty arose with respect to these excluded parts. By section 5 therefore of the Highway Act 1864 (27 and 28 Vict. c. 101) it was declared that an excluded part which had not passed a resolution to manage its own highways under the above-mentioned section of the Local Government Amendment Act 1861, and was therefore to be treated for highway purposes as part of the urban district, should for all the purposes of the Highway Acts be deemed to be a place separately maintaining its own highways and capable of being included in a highway district without the consent of the urban authority.

This section does not alter the law, but continues the present state of things in the case of urban districts existing at the passing of the Act and including part only of any parish; while with respect to the future it enacts that the ratepayers of the excluded part may by resolution decide that it shall be a highway parish and consequently subject to all the provisions of the Highway Acts with respect to inclusion in a highway district etc.: if they fail to do so within six months after the formation of the urban district,



the excluded part will be treated for highway purposes as part of the urban district.

The last paragraph, enabling quarter sessions to direct the election of way-wardens where necessary for the excluded part, is new.

CCXVII. It shall not be necessary for the urban authority, in the case of any highway rate made by them, to do the following acts or any of them ; (that is to say,)

To lay such rate before any justices, or obtain their allowance ;

To annex thereto the signature of such urban authority ;

To lay the same before the parishioners assembled in vestry ;

To verify before any justices any accounts kept by them of such highway rates ;

and all such accounts shall be audited in all respects in the same way as the other accounts of the urban authority.

Although the signature of the urban authority is rendered unnecessary by this section it is desirable that the rate should be signed by the clerk.

Certain acts not required to be done in case of highway rate made by urban authority. L.G., s. 37 (5).

#### *General Provisions as to Urban Rates.*

CCXVIII. Every urban authority, before proceeding to make a general district rate or private improvement rate under this Act, shall cause an estimate to be prepared of the money required for the purposes in respect of which the rate is to be made, showing—

The several sums required for each of such purposes ; and

The rateable value of the property assessable ; and

The amount of rate which for those purposes it is necessary to make on each pound of such value ;

and the estimate so made shall forthwith, after being approved of by the urban authority, be entered in the rate book, and be kept at their office, open to public inspection during office hours thereat ; but it shall not be deemed part of the rate, nor in any respect affect the validity of the same.

The words at the end of the section are new, and will obviate such questions as those raised in *R. v. Worksep Local Board*, 11 Jur. (N. S.) 101 ; 34 L. J., M. C. 134.

Estimate to be prepared before making rates. P.H., s. 98.

CCXIX. Any person interested in or assessed to any rate made under this Act may inspect the same, and any estimate made previously thereto, and may take copies of or extracts therefrom without fee or reward ; any person who, having the custody of any such estimate or rate, refuses to allow or does not permit

Rates to be open to inspection. P.H., s. 100.

such inspection, or such copies or extracts to be taken, shall be liable to a penalty not exceeding five pounds.

As to the recovery and application of penalties, see Part VII. Legal Proceedings.

Description of owner or occupier in rates.  
P.H.s. 101.

CCXX. Where the name of any owner or occupier liable to be rated under this Act is not known to the urban authority it shall be sufficient to assess and designate him in the rate as "the owner" or "the occupier" of the premises in respect of which the assessment is made, without further description.

The name of the owner or occupier should always, if possible, be ascertained.

Rates may be amended.  
P.H., s. 102.

CCXXI. An urban authority may from time to time amend any rate made in pursuance of this Act, by inserting therein the name of any person claiming and entitled to have his name inserted, or by inserting the name of any person who ought to have been assessed, or by striking out the name of any person who ought not to have been assessed, or by raising or reducing the sum at which any person has been assessed, if it appears to the urban authority that he has been under-rated or over-rated, or by making any other alteration which will make the rate conformable to the provisions of this Act; and no such amendment shall be held to avoid the rate.

Provided, that any person who may feel himself aggrieved by any such amendment shall have the same right of appeal therefrom as he would have had if the matter of amendment had appeared on the rate originally made, and with respect to him an amended rate shall be considered to have been made at the time when he first received notice of the amendment; and an amended rate shall not be payable by any person the amount of whose rate is increased by the amendment, or whose name is thereby newly inserted, until seven days after such notice has been given to him.

The appeal against rates is to quarter sessions under section 269.

Publication and collection of rates.  
P.H., s. 103.

CCXXII. All rates made or collected under this Act shall be published in the same manner as poor rates, and shall commence and be payable at such time or times, and shall be made in such manner and form, and be collected by such persons, and either together or separately, or with any other rate or tax, as the urban authority may from time to time appoint: Provided

that no publication shall be required of any private improvement rate.

CCXXIII. The production of the books purporting to contain any rate or assessment made under this Act shall, without any other evidence whatever, be received as *prima-facie* evidence of the making and validity of the rates mentioned therein.

Evidence of rates. P.H., s. 106.

This section does not render any illegal rate legal. It merely throws the onus of proof of the illegality on the person objecting to the rate.

CCXXIV. Where it appears to an urban authority that any premises were sufficiently drained before the construction of any new sewer laid down by them, they may deduct from the amount of rates otherwise chargeable in respect of such premises such a sum for such time as they may under all the circumstances of the case deem just.

Power to make deduction from rate in certain cases. L.G., s. 29.

CCXXV. An urban authority may reduce or remit the payment of any rate on account of the poverty of any person liable to the payment thereof.

Power to reduce or remit rates. P.H., s. 96.

Poverty is the only ground on which the rate may be remitted or reduced. In any other case, if the rate is not collected, the collector will be liable to be surcharged by the auditor with the amount. See section 250.

CCXXVI. Nothing in this part of this Act shall alter or affect any lease contract or agreement made or entered into between the landlord and tenant of any premises.

Saving for existing agreements. P.H., s. 97.

See *Tidswell v. Whitworth*; L. R. 2 C. P. 326; 36 L. J., C. P. 103; *Crosse v. Raw*, L. R. 9 Ex. 209.

CCXXVII. Any limit imposed on or in respect of any rate by any Local Act of Parliament shall not apply to any rate required to be levied for the purpose of defraying any expenses incurred by an urban authority in the execution of this Act.

Limit in local Act not to apply to rate for purposes of this Act. P.H., 1872, s. 43.

It was argued (unsuccessfully) in *Walton Commissioners v. Walford*, L. R. 10 Q. B. 180, that "limit" in the section from which this section is taken included exemption.

CCXXVIII. Nothing in this Act shall be deemed to alter or interfere with any liability existing at the time of the passing of this Act of the Universities of Oxford and Cambridge respectively to contribute towards the expenses of paving and pitching repairing lighting and cleansing under the powers of any local Act under which the Oxford and Cambridge commissioners respectively act,

Quota of rates to be paid by the Universities, etc. P.H., s. 105. L.G., s. 82.

the several streets and places within the jurisdiction of such commissioners respectively.

If any difference arises between either of the said universities and the urban authority with respect to the proportion and manner in which the university shall contribute towards any expenses under this Act, and to which the university is not liable under any such local Act, the same shall be settled by arbitration in manner provided by this Act.

All rates, contributions, and sums of money which may become payable under this Act by the said universities respectively, and their respective halls and colleges, may be recovered from such universities halls and colleges, in the same manner in all respects as rates contributions and sums of money may now be recovered from them by virtue of any such local Act.

#### EXPENSES OF RURAL AUTHORITY.

See pp. 13, 14.

Expenses  
of rural  
authority.  
P.H. 1872,  
s. 17.  
P.H. 1874,  
s. 10.

CCXXIX. The expenses incurred by a rural authority in the execution of this Act shall be divided into general expenses and special expenses.

General expenses (other than those chargeable on owners and occupiers under this Act) shall be the expenses of the establishment and officers of the rural authority, the expenses in relation to disinfection, the providing conveyance for infected persons, and all other expenses not determined by this Act or by order of the Local Government Board to be special expenses.

Thus if an assistant clerk is appointed whose duty it is to attend a parochial committee appointed for any contributory place, or if a room is hired for the use of such committee, the expenses thus incurred, although they are incurred for the benefit of a particular contributory place only, must be charged as general expenses, as forming part of the expenses of the establishment and officers of the rural authority.

Special expenses shall be the expenses of the construction maintenance and cleansing of sewers in any contributory place within the district, the providing a supply of water to any such place, and maintaining any necessary works for that purpose, if and so far as the expenses of such supply and works are not defrayed out of water rates or rents under this Act, the charges and expenses arising out of or incidental to the possession of property transferred to the rural authority in trust for any contributory place, and all other expenses incurred or payable by



the rural authority in or in respect of any contributory place within the district, and determined by order of the Local Government Board to be special expenses.

The section only mentions sewers *in* any contributory place. There can however be little doubt that the cost of sewers provided for the benefit of a place, though outside it, must be charged as special expenses.

Under section 10 of the Sanitary Law Amendment Act 1874, the cost of the cleansing and lighting of streets was to be deemed special expenses. This enactment is not repeated.

Where the rural authority make any sewers or provide any water supply or execute any other work under this Act for the common benefit of any two or more contributory places within their district, they may apportion the expense of constructing any such work, and of maintaining the same, in such proportions as they think just, between such contributory places, and any expense so apportioned to any such contributory place shall be deemed to be special expenses legally incurred in respect of such contributory place.

The overseers of any contributory place, if aggrieved by any such apportionment, may, within twenty-one days after notice has been given to them of the apportionment, send or deliver a memorial to the Local Government Board stating their grounds of complaint, and the said Board may make such order in the matter as to it may seem equitable, and the order so made shall be binding and conclusive on all parties concerned.

General expenses shall be payable out of a common fund to be raised out of the poor rate of the parishes in the district according to the rateable value of each contributory place in manner in this Act mentioned.

Special provision is made by section 230 for the case of contributions for general expenses from contributory places which are parts of parishes.

Special expenses shall be a separate charge on each contributory place.

The following areas situated in a rural district shall be contributory places for the purposes of this Act ; (that is to say,)

- (1.) Every parish not having any part of its area within the limits of a special drainage district formed in pursuance of the Sanitary Acts or of this Act, or of an urban district ; and
- (2.) Every such special drainage district as aforesaid ; and
- (3.) In the case of a parish wholly situated in a rural district, and part of which forms or is part of any such special

drainage district as aforesaid, such portion of that parish as is not comprised within such special drainage district ; and

- (4.) In the case of a parish a part of which is situated within an urban district, such portion of that parish as is not comprised within such urban district, or within any such special drainage district as aforesaid.

Under part I. of the Sanitary Act 1866 and sections 6—10 of the S. U. Act 1867 special drainage districts might be formed in three different ways, though probably the power has only been exercised to a very limited extent.

(1.) A special drainage district might be carved out of a parish by the vestry of the parish acting as the sewer authority. (Sanitary Act 1866, section 5.)

(2.) Where part of a parish was included in a local government district, before 20th August 1867, the remaining part became a special drainage district unless the Secretary of State otherwise directed within three months after that date. (S. U. 1867, section 7.)

(3.) The inhabitants of a place not having a known or defined boundary might petition the Local Government Board to have its boundaries settled for the purpose of forming a special drainage district. (S. U. 1867, section 8.)

The power for rural authorities to form special drainage districts under this Act will be found in section 277.

Mode of  
arising  
contribu-  
tions in  
rural  
district.  
P.H. 1872,  
s. 18.  
S.U. 1867,  
s. 17.

CCXXX. For the purpose of obtaining payment from the several contributory places within their district of the sums to be contributed by them, the rural authority shall issue their precept to the overseers of each such contributory place requiring such overseers to pay, within a time limited by the precept, the amount specified in such precept to the rural authority or to some person appointed by them, care being taken to issue separate precepts in respect of contributions for general expenses and special expenses, or to make such expenses respectively separate items in any precept including both classes of expenses.

Where a contributory place is part of a parish as defined by this Act, the overseers of such parish shall for the purposes of this Act be deemed to be the overseers of such contributory place, and where any part of a contributory place is part of a parish the overseers of such parish shall for the like purposes be deemed to be the overseers of such part of such contributory place.

The overseers shall comply with the requisitions of such precept by paying the contribution required in respect of general expenses out of the poor rate of their respective parishes, and with respect to special expenses by raising the contribution required by the levy (in the case of an entire parish on the whole of such parish, and in the case of a contributory place or part of a contributory place

forming part of a parish, by the levy on such place, or such part thereof, exclusive of the rest of the parish) of a separate rate in the same manner as if it were a rate for the relief of the poor with this exception ; (namely,)

That the owner of any tithes, or of any tithe commutation rent-charge, or the occupier of any land used as arable meadow or pasture ground only, or as woodlands market gardens or nursery grounds, and the occupier of any land covered with water, or used as a canal or towing-path for the same, or as a railway constructed under the powers of any Act of Parliament for public conveyance, shall, where a special assessment is made for the purpose of such rate, be assessed in respect of one-fourth part only of the rateable value thereof, or where no special assessment is made, shall pay in respect of the said property one-fourth part only of the rate in the pound payable in respect of houses and other property :

See section 211 (1) (*b*), and note.

Provided that where the amount required by any precept or precepts from a contributory place in respect of special expenses is less than ten pounds, or is so small that a rate less than one penny in the pound would be required to raise the same, the overseers shall not assess and levy any special rate for the same, but shall pay the amount as if it formed part of the contribution required from them in respect of general expenses.

P.H. 1874,  
s. 11.

Under the Sanitary Law Amendment Act 1874 the amount was to be paid out of the poor rate; and a question arose whether the poor rate could be recouped when the contributory place formed part of a parish. This question is set at rest by the new provision.

A separate rate under this section shall, as respects the powers of the overseers in relation to making assessing and levying such rate, and as respects the appeal against such rate, and all other incidents thereof except the purposes to which it is applicable, and such exemption as aforesaid, and except the allowance of justices, which shall not be required, be subject to the same provisions as apply in law to a rate levied for the relief of the poor ; and the overseers of a parish shall have the same powers of levying such separate rate in a contributory place or part of a contributory place forming part of their parish, as they would have if such contributory place or such part thereof formed the whole of their parish.

Where a contribution for general expenses is required from a



contributory place or part of a contributory place which is part of a parish, the overseers shall from time to time levy such increase of rate from the contributory place or such part thereof as may be sufficient to recoup the parish for the sum it has paid on account of the contributory place or such part thereof in respect of general expenses under this Act, and carry the same to the general account of the parish, and such increase of rate shall be raised in such contributory place or part of a contributory place by an addition to the poor rate, or by a separate rate to be assessed made allowed published collected and levied in the same manner as a poor rate. The officers ordinarily employed in the collection of the poor rate shall, if required by the overseers, collect any separate rate made under this section, and receive out of such separate rate such remuneration for the additional duty as the overseers with the consent of the vestry may determine.

The overseers shall at the expiration of their term of office pay any surplus in their hands arising from any separate rate levied in pursuance of this Act, above the amount for which the rate was made, to the rural authority or to such person as they may appoint, to the credit of the contributory place within which or within part of which such rate was made, and such surplus shall go in reduction of the next call that may be made on such contributory place or such part thereof for the purpose of defraying the expenses incurred by the rural authority.

The provision that the remuneration of the collectors for collecting the separate rate is to be paid out of that rate is new.

It is presumed that if the surplus has arisen from a rate levied for special expenses, it cannot be applied in aid of a call for general expenses.

Remedy  
for non-  
payment  
by over-  
seers of  
amount  
required  
by pre-  
cept of  
rural  
authority.  
P.H. 1872,  
s. 19.

CCXXXI. If the amount required by any precept of a rural authority to be paid by the overseers of any parish is not paid in manner directed by such precept, and within the time therein specified for that purpose, the rural authority shall have the like remedy for recovery from the overseers of such amount as is not paid as guardians have for the time being for recovery from overseers of contributions of parishes, and for that purpose the precept of the rural authority requiring the payment shall be conclusive evidence of the amount thereof.

See 2 & 3 Viet. c. 84; 12 & 13 Viet. c. 103; and 14 & 15 Viet. c. 105.



CCXXXII. Whenever a rural authority have incurred or become liable to any expenses which by this Act are, or by such authority may be declared to be private improvement expenses, such authority may make and levy a private improvement rate in the same manner as private improvement rates may be made and levied by an urban authority ; and all the provisions of this Act applicable to private improvement rates leviable by an urban authority shall apply accordingly to any private improvement rate leviable by a rural authority.

As to private improvement expenses. San. 1868, s. 6.

See sections 213-15.

#### BORROWING POWERS.

CCXXXIII. Any local authority may, with the sanction of the Local Government Board, for the purpose of defraying any costs charges and expenses incurred or to be incurred by them in the execution of the Sanitary Acts or of this Act, or for the purpose of discharging any loans contracted under the Sanitary Acts or this Act, borrow or re-borrow, and take up at interest, any sums of money necessary for defraying any such costs charges and expenses, or for discharging any such loans as aforesaid.

Power to borrow on credit of rates. P.H. 1872, s. 40. L.G., s. 57. P.H. 1874, s. 36.

Where it is intended to defray the cost of works by means of a loan, the sanction of the Local Government Board to the loan should be obtained before the works are commenced.

An urban authority may borrow or re-borrow any such sums on the credit of any fund or all or any rates or rate out of which they are authorised to defray expenses incurred by them in the execution of this Act, and for the purpose of securing the repayment of any sums so borrowed with interest thereon, they may mortgage to the persons by or on behalf of whom such sums are advanced any such fund or rates or rate.

A rural authority may borrow or re-borrow any such sums, if applied or intended to be applied to general expenses of such authority, on the credit of the common fund out of which such expenses are payable, and if applied or intended to be applied to special expenses of such authority, on the credit of any rate or rates out of which such expenses are payable, and for the purpose of securing the repayment of any sums so borrowed, with interest thereon, they may mortgage to the persons by or on behalf of whom such sums are advanced any such fund rate or rates.

As to mortgages see sections 236 sqq.

Regulations as to exercise of borrowing powers.

L.G., s. 57.  
P.H. 1872,  
s. 40.  
P.H. 1874,  
s. 36.  
S.U. 1865,  
s. 6.

CCXXXIV. The exercise of the powers of borrowing conferred by this Act shall be subject to the following regulations ; (namely,)

- (1.) Money shall not be borrowed except for permanent works, (including under this expression any works of which the cost ought in the opinion of the Local Government Board to be spread over a term of years) :
- (2.) The sum borrowed shall not at any time exceed, with the balances of all the outstanding loans contracted by the local authority under the Sanitary Acts and this Act, in the whole the assessable value for two years of the premises assessable within the district in respect of which such money may be borrowed :

Sums borrowed for sanitary purposes under local Acts need not be taken into account for the purposes of this subsection.

- (3.) Where the sum proposed to be borrowed with such balances (if any) would exceed the assessable value for one year of such premises, the Local Government Board shall not give their sanction to such loan until one of their inspectors has held a local inquiry and reported to the said Board :
- (4.) The money may be borrowed for such time, not exceeding sixty years, as the local authority, with the sanction of the Local Government Board, determine in each case ; and (subject as aforesaid) the local authority shall either pay off the moneys so borrowed by equal annual instalments of principal or of principal and interest, or they shall in every year set apart as a sinking fund, and accumulate in the way of compound interest by investing the same in the purchase of exchequer bills or other Government securities, such sum as will with accumulations in the way of compound interest be sufficient, after payment of all expenses, to pay off the moneys so borrowed within the period sanctioned :

It is understood that it is the practice of the Local Government Board to allow thirty years as the period of repayment for loans for such works as sewerage and water supply and fifteen or twenty years for works of paving when the existing debt of the district under the Sanitary Acts and this Act does not exceed one year's rateable value. If this amount is exceeded a longer term is allowed. See section 15 (3) of the Local Loans Act 1875 in Appendix II. with regard to the investment of sums set apart as a sinking fund in the case of a loan under that Act.

- (5.) A local authority may at any time apply the whole or any part of a sinking fund set apart under this Act in or towards the discharge of the moneys for the repayment of which the fund has been established: Provided that they pay into the fund in each year and accumulate until the whole of the moneys borrowed are discharged, a sum equivalent to the interest which would have been produced by the sinking fund or the part of the sinking fund so applied:

This paragraph is new, and enables a local authority from time to time to apply their sinking fund in discharge of debt, on condition of keeping up a payment into the fund of a sum equivalent to the interest which would have been produced by the sinking fund or part thereof so applied.

- (6.) Where money is borrowed for the purpose of discharging a previous loan, the time for repayment of the money so borrowed shall not extend beyond the unexpired portion of the period for which the original loan was sanctioned, unless with the sanction of the Local Government Board, and shall in no case be extended beyond the period of sixty years from the date of the original loan.

Where any urban authority borrow any money for the purpose of defraying private improvement expenses, or expenses in respect of which they have determined a part only of the district to be liable, it shall be the duty of such authority, as between the rate-payers of the district, to make good, so far as they can, the money so borrowed, as occasion requires, either out of private improvement rates, or out of a rate levied in such part of the district as aforesaid.

As to private improvement expenses, see sections 213-215, section 240 and section 257. As to dividing the district for rating purposes, see section 211 (4).

CCXXXV. Where any local authority are possessed of any lands works or other property for the purposes of disposal of sewage pursuant to this Act, they may borrow any moneys on the credit of such lands works or other property, and may mortgage such lands works or other property to any person advancing such moneys, in the same manner in all respects as if they were the absolute owner, both at law and in equity, of the lands works or other property so mortgaged. The moneys so borrowed shall be applied for purposes for which moneys may be borrowed under this Act; but it shall not be in any way incumbent on the mort-

Power to borrow on credit of sewage land and plant.  
P.H. 1872, s. 41.

gagees to see to the application of such moneys, nor shall they be responsible for any misapplication thereof.

The powers of borrowing conferred by this section shall, where the sums borrowed do not exceed three-fourths of the purchase money of such lands (but not otherwise), be deemed to be distinct from and in addition to the general borrowing powers conferred on a local authority by this Act. Any local authority may pay out of any rates leviable by them for purposes of this Act the interest on any moneys borrowed by such authority in pursuance of this section.

The sanction of the Local Government Board is not required to the exercise of the power of borrowing conferred by this section; but it will be observed that the money can only be spent on permanent works.

Form of  
mortgage.  
P.H., s.  
111. !

CCXXXVI. Every mortgage authorised to be made under this Act shall be by deed, truly stating the date consideration and the time and place of payment, and shall be sealed with the common seal of the local authority, and may be made according to the form contained in schedule IV. to this Act, or to the like effect.

Form H. This form does not apply to mortgages made under section 235.

Register  
of mort-  
gages.  
P.H., s.  
111.

CCXXXVII. There shall be kept at the office of the local authority a register of the mortgages on each rate, and within fourteen days after the date of any mortgage an entry shall be made in the register of the number and date thereof, and of the names and description of the parties thereto, as stated in the deed. Every such register shall be open to public inspection during office hours at the said office, without fee or reward; and any clerk or other person having the custody of the same, refusing to allow such inspection, shall be liable to a penalty not exceeding five pounds.

Transfer  
of mort-  
gages.  
P.H., s.  
112.

CCXXXVIII. Any mortgagee or other person entitled to any mortgage under this Act may transfer his estate and interest therein to any other person by deed duly stamped, truly stating its date and the consideration for the transfer; and such transfers may be according to the form contained in schedule IV. to this Act, or to the like effect.

There shall be kept at the office of the local authority a register of the transfers of mortgage charged on each rate, and within



thirty days after the date of such deed of transfer if executed within the United Kingdom, or within thirty days after its arrival in the United Kingdom if executed elsewhere, the same shall be produced to the clerk of the local authority, who shall, on payment of a sum not exceeding five shillings, cause an entry to be made in such register of its date, and of the names and description of the parties thereto, as stated in the transfer; and until such entry is made the local authority shall not be in any manner responsible to the transferee.

On the registration of any transfer the transferee his executors or administrators shall be entitled to the full benefit of the original mortgage and the principal and interest secured thereby; and any transferee may in like manner transfer his estate and interest in any such mortgage; and no person except the last transferee his executors or administrators shall be entitled to release or discharge any such mortgage or any money secured thereby.

If the clerk of the local authority wilfully neglects or refuses to make in the register any entry by this section required to be made, he shall be liable to a penalty not exceeding twenty pounds.

Form. I. See note to section 236.

It will be observed that this section provides like the Companies Clauses Act 1845 that until a transfer is registered the local authority shall not be responsible to the transferee. The word "assigns" seems to have been improperly inserted in section 112 of the Public Health Act 1848.

CCXXXIX. If at the expiration of six months from the time when any principal money or interest has become due on any mortgage of rates made under this Act, and after demand in writing, the same is not paid, the mortgagee or other person entitled thereto may, without prejudice to any other mode of recovery, apply for the appointment of a receiver to a court of summary jurisdiction; and such court may, after hearing the parties, appoint in writing under their hands and seals some person to collect and receive the whole or a competent part of the rates liable to the payment of the principal or interest in respect of which the application is made, until such principal or interest, or both, as the case may be, together with the costs of the application and of collection, are fully paid.

Receiver  
may be  
appointed  
in certain  
cases.  
P.H., s.  
114.

On such appointment being made all such rates, or such competent part thereof as aforesaid, shall be paid to the person appointed, and when so paid shall be so much money received by or to the

use of the mortgagee or mortgagees of such rates, and shall be rateably apportioned between them :

Provided that no such application shall be entertained unless the sum or sums due and owing to the applicant amount to one thousand pounds, or unless a joint application is made by two or more mortgagees or other persons to whom there may be due, after such lapse of time and demand as last aforesaid, moneys collectively amounting to that sum.

Considerable difficulty would seem to attend a resort to this remedy. See *Preston v. Mayor etc. of Yarmouth*, 41 L. J. Ch. 310 ; 27 L. T. 87.

Rent-charge may be granted in respect of advances made for private improvements. L.G., s. 58.

CCXL. Where any person has advanced money for any expenses which by this Act are, or by the local authority may be declared to be private improvement expenses, the local authority, on being satisfied by the report of their surveyor or otherwise that the money advanced by such person has been duly expended, may issue a grant in the form in schedule IV. to this Act to such person of a yearly rentcharge issuable out of the premises, in respect whereof such advance has been made, or out of such part thereof, to be specified in such grant, as the local authority may think proper and sufficient.

Such rentcharge shall be personal estate, and shall begin to accrue from the day of completion of the works on which the money advanced has been expended, and shall be payable by equal half-yearly payments during a term not exceeding thirty years, in such manner that the whole of the sum advanced, with the costs of preparing the said grant, together with interest thereon respectively, at a rate not exceeding six pounds per centum per annum on the sum from time to time remaining unpaid, shall be repaid at the end of the said term.

The provisions of this Act with respect to deduction from the rent of a proportion of private improvement rates, and with respect to redemption of private improvement rates, shall, *mutatis mutandis*, apply to rentcharges granted under this section.

Form K. For the provisions referred to in the last paragraph of this section, see sections 214 and 215.

Rent-charges to be registered. L.G., s. 59.

CCXLI. Rentcharges issued in pursuance of this Act, and transfers thereof, shall be registered in the same manner respectively as mortgages and transfers are required to be registered under the provisions of this Act.

Sections 237, 238.

CCXLII. The Public Works Loan Commissioners may, if they see fit, on the application of any local authority, make any loan to such authority for any of the purposes of this Act on the security of any fund or rate applicable to any of the purposes of this Act, without requiring any further or other security.

This section merely empowers the Public Works Loan Commissioners to lend to local authorities according to their ordinary practice with regard to rate of interest time of repayment and so forth. See in Appendix II. the Public Works Loans Act 1875 (38 and 39 Vict. c. 89).

The next section empowers the Commissioners on the recommendation of the Local Government Board (but not otherwise) to lend to local authorities on exceptionally favourable terms.

For the power of the Commissioners to lend to the Local Government Board for the purpose of defraying expenses incurred by the Board in the performance of the duty of a defaulting local authority, see section 301.

Power of  
Public  
Works  
Loan  
Commis-  
sioners to  
lend to  
local  
authority.  
P.H., s.  
108.  
S.U. 1865,  
s. 12.

CCXLIII. The Public Works Loan Commissioners may, on the application of any local authority and on the recommendation of the Local Government Board, make any loan to such authority in pursuance of any powers of borrowing conferred by this Act, whether for works already executed or yet to be executed, on the security of any fund or rate applicable to any of the purposes of this Act, and without requiring any further or other security, such loan to be repaid within a period not exceeding fifty years, and to bear interest at the rate of three and a half per centum per annum, or such other rate as may, in the judgment of the Commissioners of the Treasury, be necessary, in order to enable the loan to be made without loss to the Exchequer :

Power of  
Public  
Works  
Loan  
Commis-  
sioners to  
lend to  
local  
authority  
on recom-  
mendati-  
on of Local  
Govern-  
ment  
Board.  
P.H. 1872,  
s. 44.  
P.H. 1874,  
s. 36.

Provided,—

(1.) That in determining the time when a loan under this section shall be repayable, the Local Government Board shall have regard to the probable duration and continuing utility of the works in respect of which the same is required :

(2.) That this section shall not extend to any loan required for the purpose of defraying expenses incurred by the Local Government Board in the performance of the duty of a defaulting local authority after the passing of the Public Health Act 1872.

In the case of a loan made before the passing of the Public Health Act 1872, to any local authority in pursuance of any powers conferred by the Sanitary Acts, the Public Works Loan Commissioners may reduce the interest payable thereon to the rate of not less than three and a half per centum per annum.

It will be observed that this section only applies where the powers of borrowing are conferred by this Act: where a local authority are exercising powers of borrowing conferred by a local Act, this section does not apply.

It is understood that the rates charged by the Public Works Loan Commissioners for advances under this section are as follows:— $3\frac{1}{2}$  per cent. where the loan is to be repaid in thirty years,  $3\frac{3}{4}$  where it is to be repaid in forty years, and 4 per cent. where it is to be repaid in fifty years.

Borrowing  
powers of  
joint  
boards  
and cer-  
tain other  
authori-  
ties.

CCXLIV. Joint boards and port sanitary authorities under this Act, and the local board of health of any main sewerage district and any joint sewerage board constituted under any of the Sanitary Acts and existing at the time of the passing of this Act shall, for the purposes of their constitution, have like powers of borrowing on the credit of any fund or rate applicable by them to purposes of this Act or on the credit of sewage land and plant as are by this Act conferred on local authorities, and in the exercise of those powers shall be subject to the like restrictions; and the Public Works Loan Commissioners may make any loan to any of the above-mentioned authorities which they make to a local authority under this Act.

Joint boards and the other authorities mentioned in this section are put on the same footing with respect to borrowing under the Act as the urban and rural authorities.

As to the boards of health for main sewerage districts and joint sewerage boards, see section 323.

As to borrowing on credit of sewage land and plant, section 235.

#### AUDIT.

##### *Audit of Accounts of Local Authorities.*

Accounts  
of local  
authori-  
ties.  
P.H. 1872,  
s. 49.

CCXLV. Accounts of the receipts and expenditure under this Act of every local authority shall be made up in such form and to such day in every year as the Local Government Board may appoint.

This applies to the accounts of receipts and expenditure under this Act of town councils, though the audit follows the course of the audit of the ordinary municipal accounts.

Audit  
where  
urban  
authority  
are a  
town  
council.  
L.G., s. 60.

CCXLVI. Where an urban authority are the council of a borough the accounts of the receipts and expenditure under this Act of such authority shall be audited and examined by the auditors of the borough, and shall be published in like manner and at the same time as the municipal accounts, and the auditors shall proceed in the audit after like notice and in like manner, shall have like powers and authorities and perform like duties, as in the case of auditing the municipal accounts.



Each of such auditors shall in respect of each audit be paid such reasonable remuneration, not being less than two guineas for every day in which they are employed in such audit, as such authority from time to time appoint. Any order of such authority for the payment of any money may be removed by *certiorari*, and like proceedings may be had thereon as under section forty-four of the Act of the first year of Her Majesty, chapter seventy-eight, with respect to orders of the council of a borough for payments out of the borough fund.

7 W. IV.  
& 1 Vict.,  
c. 78.

CCXLVII. Where an urban authority are not the council of a borough the following regulations with respect to audit shall be observed; (namely,)

Audit  
where  
urban  
authority  
are not a  
town  
council.  
L.G., s. 60.

- (1.) The accounts of the receipts and expenditure under this Act of such authority shall be audited and examined once in every year, as soon as can be after the twenty-fifth day of March, by the auditor of accounts relating to the relief of the poor for the union in which the district of such authority or the greater part thereof is situate, unless such auditor is a member of the authority whose accounts he is appointed to audit, in which case such accounts shall be audited by such auditor of any adjoining union as may from time to time be appointed by the Local Government Board :

The substitution of the Local Government Board for the local authority at the end of this subsection is new.

- (2.) There shall be paid to such auditor in respect of each audit under this Act, such reasonable remuneration, not being less than two guineas for every day in which he is employed in such audit, as such authority from time to time appoint, together with his expenses of travelling to and from the place of audit :

- (3.) Before each audit such authority shall, after receiving from the auditor the requisite appointment, give at least fourteen days' notice of the time and place at which the same will be made, and of the deposit of accounts required by this section, by advertisement in some one or more of the local newspapers circulated in the district ; and the production of the newspaper containing such notice shall

P.H. 1874,  
s. 38.

be deemed to be sufficient proof of such notice on any proceeding whatsoever :

L.G. Am.,  
s. 15.

- (4.) A copy of the accounts duly made up and balanced, together with all rate books account books deeds contracts accounts vouchers and receipts mentioned or referred to in such accounts, shall be deposited in the office of such authority, and be open, during office hours thereat, to the inspection of all persons interested for seven clear days before the audit, and all persons shall be at liberty to take copies of or extracts from the same, without fee or reward ; and any officer of such authority duly appointed in that behalf neglecting to make up such accounts and books, or altering such accounts and books, or allowing them to be altered when so made up, or refusing to allow inspection thereof, shall be liable to a penalty not exceeding five pounds :

It is presumed that any ratepayer or owner of property within the district is a person interested within the meaning of this subsection.

L.G., s. 60  
(3).

- (5.) For the purpose of any audit under this Act, every auditor may, by summons in writing, require the production before him of all books deeds contracts accounts vouchers receipts and other documents and papers which he may deem necessary, and may require any person holding or accountable for any such books deeds contracts accounts vouchers receipts documents or papers to appear before him at any such audit or any adjournment thereof, and to make and sign a declaration as to the correctness of the same; and if any such person neglects or refuses so to do, or to produce any such books deeds contracts accounts vouchers receipts documents or papers, or to make or sign such declaration, he shall incur for every neglect or refusal a penalty not exceeding forty shillings ; and if he falsely or corruptly makes or signs any such declaration, knowing the same to be untrue in any material particular, he shall be liable to the penalties inflicted on persons guilty of wilful and corrupt perjury.

L.G. Am.,<sup>3</sup>  
s. 15.

- (6.) Any ratepayer or owner of property in the district may be present at the audit, and may make any objection to such accounts before the auditor ; and such ratepayers and owners shall have the same right of appeal against

allowances by an auditor as they have by law against disallowances.

- (7.) Any auditor acting in pursuance of this section shall disallow every item of account contrary to law, and surcharge the same on the person making or authorizing the making of the illegal payment, and shall charge against any person accounting the amount of any deficiency or loss incurred by the negligence or misconduct of that person, or of any sum which ought to have been but is not brought into account by that person, and shall in every such case certify the amount due from such person, and on application by any party aggrieved shall state in writing the reasons for his decision in respect of such disallowance or surcharge, and also of any allowance which he may have made. L.G., s. 60.

The power to surcharge the amount of deficiency or loss incurred by negligence or misconduct, and the amount of sums not brought into account, is new, but the provision is the same as that of the Poor Law audit. 7 and 8 Vict. c. 101, s. 32.

- (8.) Any person aggrieved by disallowance made may apply to the Court of Queen's Bench for a writ of *certiorari* to remove the disallowance into the said court, in the same manner and subject to the same conditions as are provided in the case of disallowances by auditors under the laws for the time being in force with regard to the relief of the poor; and the said court shall have the same powers with respect to allowances disallowances and surcharges under this Act as it has with respect to disallowances or allowances by the said auditors; or in lieu of such application any person so aggrieved may appeal to the Local Government Board, which Board shall have the same powers in the case of the appeal as it possesses in the case of appeals against allowances disallowances and surcharges by the said Poor Law auditors.
- (9.) Every sum certified to be due from any person by an auditor under this Act shall be paid by such person to the treasurer of such authority within fourteen days after the same has been so certified, unless there is an appeal against the decision; and if such sum is not so paid, and there is no such appeal, the auditor shall recover the same from the person against whom the same has been certified

to be due by the like process and with the like powers as in the case of sums certified on the audit of the poor rate accounts, and shall be paid by such authority all such costs and expenses, including a reasonable compensation for loss of time incurred by him in such proceedings, as are not recovered by him from such person :

- (10.) Within fourteen days after the completion of the audit, the auditor shall report on the accounts audited and examined, and shall deliver such report to the clerk of such authority, who shall cause the same to be deposited in their office, and shall publish an abstract of such accounts in some one or more of the local newspapers circulated in the district.

L.G. Am.,  
s. 3.

Where the provisions as to audit of any local Act constituting a board of improvement commissioners are repugnant to or inconsistent with those of this Act, the audit of the accounts of such improvement commissioners shall be conducted in all respects in accordance with the provisions of this Act.

This last provision is new, but it is in accordance with the decision of the Court of Queen's Bench in *Gibson v. Bell*, 39 J. P. 421, whilst the Bill was passing through Parliament.

Audit of  
accounts  
of rural  
authority.  
P.H. 1872,  
s. 49.

CCXLVIII. The accounts under this Act of every rural authority shall be audited by the same persons and in every respect in the same manner as the accounts of guardians are audited under the Acts for the relief of the poor for the time being in force.

The accounts of the overseers collecting or paying any money for the purposes of this Act shall be audited in the same manner as the accounts of overseers collecting or paying any money for the purposes of the Acts relating to the relief of the poor for the time being in force.

An auditor shall, with respect to the accounts audited under this section, have the like powers and be subject to the like obligations in every respect as in the case of an audit under the Acts relating to the relief of the poor, and any person aggrieved by the decision of the auditor shall have the like rights and remedies as in the case of such last-mentioned audit.

See the provisions relating to Poor Law audit in Appendix I.

Taxation  
of bill of  
solicitor or  
attorney.  
P.H. 1872,  
s. 50.  
P.H. 1874,  
s. 39.

CCXLIX. On the application of any local authority whose accounts are required by this Act to be audited to the clerk of the peace of the county in which the district of such authority is wholly or in part situated, the said clerk or his deputy shall tax any bill due to any solicitor or attorney in respect of legal business per-



formed on behalf of such authority ; and the allowance of any sum on such taxation shall be *primâ-facie* evidence of the reasonableness of the amount, but not of the legality of the charge.

The clerk of the peace shall be allowed for such taxation a remuneration after the rate to be fixed by the master of the Crown Office, and declared by an order of the Local Government Board.

If any such bill is not taxed by the clerk of the peace or some other duly authorised taxing officer before being presented to the auditors or auditor, decision of the auditors or auditor upon the reasonableness and the legality of the charge shall be final.

See in Appendix III. the order issued under section 50 of the Public Health Act 1872. This order is still in force. See *R. v. Napton*, 25 L. J. (N. S.), Q. B. 296, 20 J.P. 581.

CCL. The accounts under this Act of officers or assistants of any local authority who are required to receive moneys or goods on behalf of such authority shall be audited by the auditors or auditor of the accounts of such authority, with the same powers incidents and consequences as in the case of such last-mentioned accounts.

Auditor to audit accounts of officers. P.H., 1874, s. 38.

## PART VII.

### LEGAL PROCEEDINGS.

#### *Prosecution of Offences and Recovery of Penalties, etc.*

CCLI. All offences under this Act, and all penalties forfeitures costs and expenses under this Act directed to be recovered in a summary manner, or the recovery of which is not otherwise provided for, may be prosecuted and recovered in manner directed by the Summary Jurisdiction Acts before a court of summary jurisdiction. The court of summary jurisdiction, when hearing and determining an information or complaint under this Act, shall be constituted of two or more justices of the peace in petty sessions, sitting at a place appointed for holding petty sessions, or of some magistrate or officer for the time being empowered by law to do alone any act authorised to be done by more than one justice of the peace sitting at some court or other place appointed for the administration of justice.

Summary proceedings for offences, penalties, etc. P.H., s. 129, etc.

See definition of the Summary Jurisdiction Acts and of "court of summary jurisdiction" in section 4.

General provisions as to summary proceedings.

CCLII. Any complaint or information made or laid in pursuance of this Act shall be made or laid within six months from the time when the matter of such complaint or information respectively arose.

The description of any offence under this Act in the words of this Act shall be sufficient in law.

Any exception exemption proviso excuse or qualification, whether it does or does not accompany the description of the offence in this Act, may be proved by the defendant, but need not be specified or negatived in the information ; and, if so specified or negatived, no proof in relation to the matters so specified or negatived shall be required on the part of the informant.

Restriction on recovery of penalties. P.H., s. 133.

CCLIII. Proceedings for the recovery of any penalty under this Act shall not, except as in this Act is expressly provided, be had or taken by any person other than by a party aggrieved, or by the local authority of the district in which the offence is committed, without the consent in writing of the Attorney General : Provided that such consent shall not be required to proceedings which are by the provisions of this Act relating to nuisances or offensive trades authorised to be taken by a local authority in respect of any act or default committed or taking place without their district, or in respect of any house building manufactory or place situated without their district.

See sections 108, 115.

As to who may be considered a party aggrieved, see *Boyce v. Higgins*, 14 C.B. 1.

Application of penalties. P.H., s. 133. L.G., s. 67.

CCLIV. Where the application of a penalty under this Act is not otherwise provided for, one half thereof shall go to the informer and the remainder to the local authority of the district in which the offence was committed : Provided, that if the local authority are the informer they shall be entitled to the whole of the penalty recovered ; and all penalties or sums recovered by them on account of any penalty shall be paid over to their treasurer, and shall by him be carried to the account of the fund applicable by such authority to the general purposes of this Act.

Sections 207, 229.

Proceedings in certain cases against

CCLV. Where any nuisance under this Act appears to be wholly or partially caused by the acts or defaults of two or more persons, it shall be lawful for the local authority or other complainant to

institute proceedings against any one of such persons, or to include all or any two or more of such persons in one proceeding ; and any one or more of such persons may be ordered to abate such nuisance, so far as the same appears to the court having cognizance of the case to be caused by his or their acts or defaults, or may be prohibited from continuing any acts or defaults which, in the opinion of such court, contributes to such nuisance, or may be fined or otherwise punished, notwithstanding that the acts or defaults of any one of such persons would not separately have caused a nuisance ; and the costs may be distributed as to such court may appear fair and reasonable.

nuisanees.  
N.R. 1855,  
ss. 33, 34,  
39.

Proceedings against several persons included in one complaint shall not abate by reason of the death of any among the persons so included, but all such proceedings may be carried on as if the deceased person had not been originally so included.

Whenever in any proceeding under the provisions of this Act relating to nuisances, whether written or otherwise, it becomes necessary to mention or refer to the owner or occupier of any premises, it shall be sufficient to designate him as the "owner" or "occupier" of such premises, without name or further description.

Nothing in this section shall prevent persons proceeded against from recovering contribution in any case in which they would now be entitled to contribution by law.

This section facilitates proceedings against persons who (so to speak) jointly contribute to a nuisance. At present it is difficult if not impossible to enforce any remedy, unless it can be clearly proved that the separate contribution of the person complained of would alone cause a nuisance, such proof being often from the nature of the case almost impossible. See *Brown v. Bussell*, L. R. 3 Q. B. 251.

CCLVI. If any person assessed to any rate made under this Act by any urban authority fails to pay the same when due and for the space of fourteen days after the same has been lawfully demanded in writing, or if any person quits or is about to quit any premises without payment of any such rate then due from him in respect of such premises, and refuses to pay the same after lawful demand thereof in writing, any justice may summon the defaulter to appear before a court of summary jurisdiction to show cause why the rate in arrear should not be paid ; and if the defaulter fails to appear, or if no sufficient cause for nonpayment is shown, the court may make an order for payment of the same, and, in default of compliance with such order, may by warrant cause the

Summary  
proceed-  
ings for  
recovery  
of rates.  
P.H., s.  
103.

same to be levied by distress of the goods and chattels of the defaulter.

L.G., s.  
54 (3).

The costs of the levy of arrears of any rate may be included in the warrant for such levy.

As to rates, see sections 210-27.

An order must now be made by a court of summary jurisdiction for payment of the rate before distress can issue, and section 11 of Jervis' Act (11 and 12 Viet., c. 43) applies, so that such order can only be obtained within six months from the time when the rate becomes payable. Under the old law this was not so. See section 103 of the Public Health Act 1848 and *R. v. Tottenham*, 1 L. J. (N. S.) 413; 24 J. P. 87.

Recovery  
of ex-  
penses by  
local  
authority  
from  
owners.  
L.G., ss.  
62, 3.  
L.G. Am.,  
s. 23,  
and see  
P.H., s.  
146.

CCLVII. Where any local authority have incurred expenses for the repayment whereof the owner of the premises for or in respect of which the same are incurred is made liable under this Act or by any agreement with the local authority, such expenses may be recovered, together with interest at a rate not exceeding five pounds per centum per annum, from the date of service of a demand for the same till payment thereof, from any person who is the owner of such premises when the works are completed for which such expenses have been incurred, and until recovery of such expenses and interest the same shall be a charge on the premises in respect of which they were incurred. In all summary proceedings by a local authority for the recovery of expenses incurred by them in works of private improvement, the time within which such proceedings may be taken shall be reckoned from the date of the service of notice of demand.

Where such expenses have been settled and apportioned by the surveyor of the local authority as payable by such owner, such apportionment shall be binding and conclusive on such owner, unless within three months from service of notice on him by the local authority or their surveyor of the amount settled by the surveyor to be due from such owner, he shall by written notice dispute the same.

The six months within which a complaint must be made under the Summary Jurisdiction Acts run from the expiration of the three months here mentioned. *Jacomb v. Dodgson*, 9 Jur. (N. S.) 848; 32 L. T., M. C. 113; 7 L. T. (N. S.) 674.

The local authority may, by order, declare any such expenses to be payable by annual instalments within a period not exceeding thirty years, with interest at a rate not exceeding five pounds per centum per annum, until the whole amount is paid; and any such instalments and interest, or any part thereof, may be recovered in a summary manner from the owner or occupier for the time being



of such premises, and may be deducted from the rent of such premises, in the same proportions as are allowed in the case of private improvement rates under this Act.

There seem to be three ways in which the cost of works of private improvement executed by a local authority may be recovered. It may be recovered from the owner or occupier in a summary manner (see section 251); or it may be declared to be a private improvement expense. If this latter course is adopted, the local authority may either levy a private improvement rate on the occupier, who may deduct three-fourths of the rate from his rent (see sections 213, 214); or they may declare the sum to be payable by annual instalments. These instalments may be recovered from either the owner or the occupier; but if they are paid by the latter he may deduct three-fourths from his rent.

CCLVIII. No justice of the peace shall be deemed incapable of acting in cases arising under this Act by reason of his being a member of any local authority, or by reason of his being as one of several ratepayers, or as one of any other class of persons liable in common with the others to contribute to, or to be benefited by any rate or fund, out of which any expenses incurred by such authority are under this Act to be defrayed.

The language of the Justices of the Peace Act 1867 (30 and 31 Vict. c. 115) has been adopted in this section.

Justices may act though members of local authority or liable to contribute.  
P.H., s. 132.  
N.R. 1866, s. 2.

CCLIX. Any local authority may appear before any court, or in any legal proceeding by their clerk, or by any officer or member authorised generally or in respect of any special proceeding by resolution of such authority, and their clerk, or any officer or member so authorised shall be at liberty to institute and carry on any proceeding which the local authority is authorised to institute and carry on under this Act.

Appearance of local authorities in legal proceedings.  
San. 1866, s. 48.

CCLX. In any proceeding instituted by or against a local authority under this Act it shall not be necessary for the plaintiff to prove the corporate name of the local authority or the constitution or limits of their district: Provided that this section shall not abridge or prejudice the right of any defendant to take or avail himself of any objection which he might have taken or availed himself of if this Act had not been passed.

Name of local authority need not be proved.

This section is new, and will save technical objections and expense.

CCLXI. Proceedings for the recovery of demands below fifty pounds which local authorities are empowered to recover in a summary manner, may, at the option of the local authority, be taken in the county court as if such demands were debts within the cognizance of such courts.

Demands below 50l. may be recovered in county courts.  
L.G. Am., s. 24.

The limit of county court jurisdiction with respect to these demands is enlarged from £20 to £50.

Proceedings not to be quashed for want of form. P.H., s. 137.  
N.R. 1855, s. 39.

CCLXII. No rate order conviction or thing made or done or relating to the execution of this Act shall be vacated quashed or set aside for want of form, or (unless otherwise expressly provided by this Act) be removed or removable by *certiorari* or any other writ or process whatsoever into any of the superior courts: Provided that nothing in this section shall prevent the removal of any case stated for the opinion of a superior court, or of any rate order conviction or thing to which such special case relates.

As to the practice of taking away *certiorari* by statute see *R. v. Chantrell*, 44 L. J., M. C. 94. The proviso in this section expressly saves *certiorari* for the purpose of special cases stated by quarter sessions on points of law.

*Certiorari* though taken away by a statute remains if justices have exceeded their jurisdiction. *R. v. Staffordshire J. J.*, 3 W. R. 419; 16 L. T. (N. S.) 430.

False evidence punishable as perjury. P.H., s. 147.

CCLXIII. Any person who on any examination on oath, under any of the provisions of this Act, wilfully and corruptly gives false evidence shall be liable to the penalties inflicted on persons guilty of wilful and corrupt perjury.

The word oath was defined in the Public Health Act 1848 as including an affirmation in the case of a Quaker. This definition has been omitted as being rendered unnecessary by subsequent statutes.

Notice of action against local authority, etc. P.H., s. 139.

CCLXIV. A writ or process shall not be sued out against or served on any local authority, or any member thereof, or any officer of a local authority, or person acting in his aid for anything done or intended to be done or omitted to be done under the provisions of this Act, until the expiration of one month after notice in writing has been served on such local authority member officer or person, clearly stating the cause of action, and the name and place of abode of the intended plaintiff, and of his attorney or agent in the cause; and on the trial of any such action the plaintiff shall not be permitted to go into evidence of any cause of action which is not stated in the notice so served; and unless such notice is proved the jury shall find for the defendant.

As to notice of action, *Newton v. Ellis*, 24 L. J., Q. B. 337; 3 W. R. 476; *Wilson v. Mayor etc. of Halifax*, L. R. 3 Ex. 114; and see *Poulsum v. Thirst*, L. R. 2 C. P. 449, 36 L. J., C. P. 225; and *Selms v. Judge*, L. R. 6 Q. B. 724, a case under the Highway Acts.

The introduction of the words "or omitted to be done" meets the point raised though without success in *Jolliffe v. Wallasey Local Board*, L. R. 9 C. P. 62.

It seems that notice is not required in the case of proceedings to obtain compensation for damage done by the local authority in the exercise of their powers under the Act. *Delany v. Metropolitan Board of Works*, L. R. 2 C. P. 532, aff. 3 C. P. 311; decided on section 106 of the Metropolis Management Act 1862.

Every such action shall be commenced within six months next after the accruing of the cause of action, and not afterwards, and shall be tried in the county or place where the cause of action occurred, and not elsewhere.

This enactment does not deprive the court of their common law power to change the venue if necessary for the ends of justice. *Itchin Bridge Co. v. Southampton Local Board*, 8 Jur. (N. S.) 1261; 27 L. J., Q. B. 128; 6 W. R. 223.

Any person to whom any such notice of action is given as aforesaid may tender amends to the plaintiff his attorney or agent, at any time within one month after service of such notice, and, in case the same be not accepted, may plead such tender in bar; and in case amends have not been tendered as aforesaid, or in case the amends tendered are insufficient, the defendant may, by leave of the court at any time before trial, pay into court under plea such sum of money as he may think proper; and if upon issue joined, or upon any plea pleaded for the whole action, the jury find generally for the defendant, or if the plaintiff be nonsuited or judgment be given for the defendant, then the defendant shall be entitled to full costs of suit, and have judgment accordingly.

CCLXV. No matter or thing done, and no contract entered into by any local authority or joint board or port sanitary authority, and no matter or thing done by any member of any such authority or by any officer of such authority or other person whomsoever acting under the direction of such authority, shall, if the matter or thing were done or the contract were entered into *bonâ fide* for the purpose of executing this Act, subject them or any of them personally to any action liability claim or demand whatsoever; and any expense incurred by any such authority member officer or other person acting as last aforesaid shall be borne and repaid out of the fund or rate applicable by such authority to the general purposes of this Act.

Protection of local authority and their officers from personal liability. P.H., s. 140. N.R. 1855, s. 42. P.H. 1872, s. 28.

Provided that nothing in this section shall exempt any member of any such authority from liability to be surcharged with the amount of any payment which may be disallowed by the auditor in the accounts of such authority, and which such member authorised or joined in authorising.

This section exonerates from personal liability the individual members of local authorities. For an exposition of the law relating to the liability of a public body for damages caused by negligence in the exercise of their powers, see *Mersey Docks Trustees v. Gibbs*, L. R. 1 H. L. 93, and the cases there collected. *Winch v. Conservators of the Thames*, L. R. 7 C. P. 458.

As to the auditor's power to surcharge, see section 247 (7).



*Notices.*

Notices,  
etc. may  
be printed  
or written.  
L.G., s. 61.  
P.H. 1874,  
s. 40.

CCLXVI. Notices orders and other such documents under this Act may be in writing or print, or partly in writing and partly in print ; and if the same require authentication by the local authority the signature thereof by the clerk to the local authority or their surveyor or inspector of nuisances shall be sufficient authentication.

Service of  
notices.  
P.H., s.  
150.  
L.G., s. 61.  
N.R. 1855,  
s. 31.

CCLXVII. Notices orders and any other documents required or authorised to be served under this Act may be served by delivering the same to or at the residence of the person to whom they are respectively addressed, or where addressed to the owner or occupier of premises by delivering the same or a true copy thereof to some person on the premises ; or if there is no person on the premises who can be so served by fixing the same on some conspicuous part of the premises ; they may also be served by post by a prepaid letter, and if served by post shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of post, and in proving such service it shall be sufficient to prove that the notice order or other document was properly addressed and put into the post.

Any notice by this Act required to be given to the owner or occupier of any premises may be addressed by the description of the " owner " or " occupier " of the premises (naming them) in respect of which the notice is given, without further name or description.

This section materially extends the provisions of section 150 of the Public Health Act 1848 with respect to service of notices by post. As to service of notices under that Act, see *Mason v. Bibby*, 10 Jur. (N. S.) 519, 9 L. T. (N. S.) 692, 33 L. J., Ex. 105 ; *Peck v. Waterloo and Leaford Local Board*, 9 Jur. (N. S.) 1344, 33 L. J., M. C. 11, 9 L. T. (N. S.) 338.

*Appeal.*

Appeal in  
certain  
cases to  
Local  
Govern-  
ment  
Board.  
P.H., s.  
120.

CCLXVIII. Where any person deems himself aggrieved by the decision of the local authority in any case in which the local authority are empowered to recover in a summary manner any expenses incurred by them, or to declare such expenses to be private improvement expenses, he may, within twenty-one days after notice of such decision, address a memorial to the Local Government Board, stating the grounds of his complaint, and shall



deliver a copy thereof to the local authority ; the Local Government Board may make such order in the matter as to the said Board may seem equitable, and the order so made shall be binding and conclusive on all parties.

Any proceedings that may have been commenced for the recovery of such expenses by the local authority shall, on the delivery to them of such copy as aforesaid, be stayed ; and the Local Government Board may, if it thinks fit, by its order, direct the local authority to pay to the person so proceeded against such sum as the said Board may consider to be a just compensation for the loss damage or grivance thereby sustained by him.

As to summary recovery of expenses, see section 251. As to private improvement expenses, see sections 213, 214 and 257.

See as to the jurisdiction under this section the judgment of Blackburn J. in *Cook v. Ipswich Local Board*, L. R. 6 Q. B. 451, 40 L. J., M. C. 169.

This section makes the decision of the Local Government Board binding on all parties ; section 120 of the Public Health Act 1848 made it binding only on the local authority.

Moreover the time for appeal is extended from seven to twenty-one days.

CCLXIX. Where any person deems himself aggrieved by any rate made under the provisions of this Act, or by any order conviction judgment or determination of or by any matter or thing done by any court of summary jurisdiction, such person may appeal therefrom, subject to the conditions and regulations following :

Appeal to  
quarter  
sessions.  
P.H., ss.  
135, 136.  
N.R. 1855,  
s. 40.

- (1.) The appeal shall be made to the next court of quarter sessions for the county division or place in which the cause of appeal has arisen, holden not less than twenty-one days after the demand of the rate or the decision of the court from which the appeal is made :

The time for making the appeal is extended by this provision. Under the previous law, it must have been made to the next quarter sessions, unless there was not time to give the notice specified in the next subsection.

- (2.) The appellant shall, within fourteen days after the cause of appeal has arisen, give notice to the other party and to the authority or court of summary jurisdiction by whose act he deems himself aggrieved, of his intention to appeal and of the ground thereof :
- (3.) The appellant shall, immediately after such notice, enter, into a recognizance before a justice of the peace, with two sufficient sureties, conditioned personally to try such appeal, and to abide the judgment of the court thereon, and to pay such costs as may be awarded by the court, or

give such other security by deposit of money or otherwise as the justice may allow :

- (4.) Where the appellant is in custody the justice may, on the appellant entering into such recognizance or giving such other security as aforesaid, release him from custody :
- (5.) On appeals under this Act against any rate the court of appeal shall have the same power to amend or quash any rate or assessment, and to award costs between the parties to the appeal, as is or may by law be vested in any court of quarter sessions with respect to amending or quashing any rate or assessment, or awarding costs, on appeals with respect to rates for the relief of the poor ; and the costs awarded by the said court under this Act may be recovered in the same manner in all respects as costs awarded on the last-mentioned appeals : Provided that, notwithstanding the quashing of any rate appealed against, all moneys charged by such rate shall, if the court of appeal think fit so to order, be levied as if no appeal had been made, and such moneys, when paid, shall be taken as payment on account of the next effective rate for the purposes in respect of which the quashed rate was made :

Where the rate itself has not been appealed against, it seems doubtful whether an appeal lies against an order of the court of summary jurisdiction for payment of the rate. *Ricardo v. Local Board of Maidenhead* 2 H. and N. 257.

P.H., s.  
136.

- (6.) In the case of other appeals the court of appeal may adjourn the appeal, and on the hearing thereof may if it thinks fit confirm reverse or modify the decision of the court of summary jurisdiction, or remit the matter to the court of summary jurisdiction with the opinion of the court of appeal thereon, or make such other order in the matter as the court thinks just. The court of appeal may also make such order as to costs to be paid by either party as the court thinks just :

N.R. 1855,  
s. 40,

- (7.) The decision of the court of appeal shall be binding on all parties : Provided that the court of appeal may, if such court thinks fit, state the facts specially for the determination of a superior court.

See the proviso at the end of section 262 and notes.

## PART VIII.

## ALTERATION OF AREAS AND UNION OF DISTRICTS.

*Alteration of Areas.*

CCLXX. The following enactments shall be made as to alteration of areas :

Powers of  
Local  
Govern-  
ment  
Board in  
relation to  
alteration  
of areas.  
P.H. 1872,  
s. 22, and  
see L. G.,  
s. 77.

- (1.). The Local Government Board, by provisional order, may dissolve any local government district, and may merge any such district in some other urban or rural district or districts; or it may, by provisional order, declare the whole or any portion of a local government or a rural district immediately adjoining a local government district to be included in such last-mentioned district, or it may by provisional order declare any portion of a local government district immediately adjoining a rural district to be included in such rural district; and thereupon the included area shall, for the purposes of this Act, be deemed to form part of the district in which it is included by such order; and the remaining part (if any) of the local government district or rural district affected by such order shall continue subject to the like jurisdiction as it would have been subject to if such order had not been made unless and until the Local Government Board by provisional order otherwise directs :

The power to merge part of a local government district in an adjoining rural district was not contained in the Public Health Act 1872.

- (2.) In the case of a borough comprising within its area the whole of an Improvement Act district, or having an area co-extensive with such district, the Local Government Board by provisional order may dissolve such district and transfer to the council of the borough all or any of the jurisdiction and powers of the improvement commissioners of such district remaining vested in them at the time of the passing of this Act :
- (3.) The Local Government Board may by order dissolve any special drainage district constituted either before or after the passing of this Act in which a loan for the execution of works has not been raised, and merge it in the parish or parishes in which it is situated; and the Local Govern-

ment Board may by provisional order dissolve any such district in which a loan has been raised for the execution of works, and merge it in the parish or parishes in which it is situated.

As to special drainage districts see section 229 and note.

As to provisional orders of the Local Government Board, sections 297-8.

Local  
Govern-  
ment  
Board  
may by  
provi-  
sional  
order con-  
stitute  
local  
govern-  
ment  
district.  
P.H. 1872,  
s. 24.  
P.H. 1874,  
s. 15.

CCLXXI. The Local Government Board may, by provisional order, declare any rural district, or any portion of any rural district or districts, to be a local government district; and from and after the commencement of the order, the district or portion of the district or districts therein referred to shall become a local government district, and shall be subject to the jurisdiction of a local board, to be elected in manner provided by schedule II. to this Act.

The Local Government Board may, by any order constituting a local government district under this section, divide such district into wards for the election of members of the local board.

Where from increase of population and other circumstances it has become desirable to give a rural district or part of a rural district an urban constitution for the purposes of this Act, this section empowers the Local Government Board by provisional order to create a local government district: the next three sections provide for the creation of a local government district in pursuance of the spontaneous action of owners and ratepayers of any place situate in a rural district.

Local  
Govern-  
ment  
Board  
may by  
order con-  
stitute  
local  
govern-  
ment dis-  
trict in  
pursuance  
of a reso-  
lution of  
owners  
and rate-  
payers.  
See L.G.,  
ss. 12-18.

CCLXXII. The owners and ratepayers of any place situated in any rural district or districts, and having a known and defined boundary, may, by a resolution passed in manner provided by schedule III. to this Act, declare that it is expedient that such place should be constituted a local government district; and the Local Government Board may, if it thinks fit, by order made not less than six weeks after receipt of a copy of such resolution by the said Board, declare such place to be a local government district, and from and after the commencement of such order such place shall become a local government district, and be subject to the jurisdiction of a local board to be elected in manner provided by schedule II. to this Act.

The order is to specify a day on which it is to come into operation, which day is referred to as the commencement of the order. Section 275.

A petition may be presented to the Local Government Board from any place so situated as aforesaid, and not having a known and defined boundary, to settle its boundary for the purposes of this



Act; the petition shall state the proposed boundaries of the place, shall be signed by one-tenth of the persons rated to the relief of the poor and resident within such boundaries, and shall be supported by such evidence as the Local Government Board may require. The Local Government Board may, after local inquiry as to the genuineness of the petition, and as to the propriety of the proposed boundaries, either dismiss the petition altogether or make order as to the boundaries of the place, and may also make order as to the costs of the proceedings in relation thereto, and the persons by whom such costs are to be borne.

Any place the boundaries of which have been settled in pursuance of the foregoing provisions shall thenceforth, for the purposes of this Act, be deemed to be a place with a known and defined boundary.

By "place having a known or defined boundary" is not meant necessarily a legal district having a legal boundary: it is sufficient if the place has an actual known and defined boundary, or one that is physical visible and notorious. *R. v. Local Government Board*, L. R. 8 Q. B. 227.

It would appear that the Local Government Board cannot include in the district a larger area than that referred to in the petition.

CCLXXIII. Where not less than one-twentieth of the owners and ratepayers of any place (such twentieth to be one-twentieth in number of the owners and ratepayers of the place taken together, or the owners and ratepayers in respect of one-twentieth of the rateable property in the place,) in which a resolution has been passed declaring that it is expedient that such place should be constituted a local government district, are desirous that such district should not be constituted, or that any part of such place should be excluded therefrom, they may present a petition to the Local Government Board objecting to such resolution, and specifying the grounds of their objection.

Objection  
to resolution.  
L.G., s. 17.

Such petition shall be subscribed by the owners and ratepayers presenting the same, and shall be presented within six weeks from the date of the passing of the resolution objected to, and shall, where the exclusion of part of the place is prayed for, state the part of the place proposed to be excluded, accompanied with an explanatory plan.

The Local Government Board may after local inquiry make order with respect to the matter in question, and such order shall be binding on the place in respect of which it is made.

See as to the commencement of the order, section 275.

As to the costs of the appeal and of the inquiry, section 294.

Appeal to  
Local  
Govern-  
ment  
Board in  
case of  
alleged  
invalidity  
of vote.  
L.G., ss.  
18, 21.

CCLXXIV. Any owner or ratepayer who disputes the validity of the vote for the adoption of the resolution may appeal, within six weeks from the declaration of the decision of the meeting, to the Local Government Board, setting forth the grounds on which he disputes the validity of the vote; and the Local Government Board may, on such appeal, after local inquiry, make such order as to the said Board seems fit as to the validity or invalidity of the vote, and any other questions arising on the appeal.

But no objection shall be made, at any trial or in any legal proceeding, to the validity of the vote for the adoption of the resolution, or to any order made in pursuance thereof, or to any proceedings on which such order was founded, unless the objector gives fourteen days' notice to the other parties interested in such trial or proceeding of his intention to make the same, specifying fully the nature of the objection to be made; and no objection whatever in respect of the matters mentioned in this section shall be admissible at any trial or in any legal proceeding after the expiration of six months from the date of the constitution of the district.

This date will be the date of the commencement of the order. See section 275

General  
provisions  
as to  
orders.

CCLXXV. Every order made by the Local Government Board under this part of this Act shall specify a day on which such order shall come into operation (in this Act referred to as the commencement of the order); and from and after the commencement of the order all the powers rights duties capacities liabilities obligations and property which under this Act are exerciseable by or attaching to or vested in the local authority having, under this Act, jurisdiction in any district or part of a district which is by such order included in some other district, shall (so far as the same relate to the district or part of a district so included) pass to and vest in the local authority of such other district: Provided that in the case of the constitution of a new local government district, all the powers rights duties capacities liabilities obligations and property which under this Act are exerciseable by or attaching to or vested in any local authority or authorities having, under this Act, jurisdiction in the area so constituted a local government district, shall continue to be exerciseable by attached to and vested in such authority or authorities, until the day of the first meeting of the local board for the district so constituted.

Any order made in pursuance of this part of this Act may, if necessary, provide for the settlement of any differences, or the adjustment of any accounts or apportionment of any liabilities arising between districts parishes or other places in consequence of the exercise of any powers conferred by this part of this Act, and may direct the persons by whom and to whom any moneys found to be due are to be paid, and the mode of raising such moneys; and where any local government district is diminished or increased in extent under this part of this Act, the order shall prescribe the number of members to be elected for the district when altered.

The Local Government Board may include in the same order provisions for the dissolution of one district, and for the inclusion of the whole or any part of such district in any other district or districts.

CCLXXVI. The Local Government Board may, on the application of the authority of any rural district, or of persons rated to the relief of the poor, the assessment of whose hereditaments amounts at the least to one-tenth of the net rateable value of such district, or of any contributory place therein, by order to be published in the *London Gazette* or in such other manner as the Local Government Board may direct, declare any provisions of this Act in force in urban districts to be in force in such rural district or contributory place, and may invest such authority with all or any of the powers rights duties capacities liabilities and obligations of an urban authority under this Act, and such investment may be made either unconditionally or subject to any conditions to be specified by the Board as to the time, portion of the district, or manner during at and in which such powers rights duties liabilities capacities and obligations are to be exercised and attach: Provided that an order of the Local Government Board made on the application of one-tenth of the persons rated to the relief of the poor in any contributory place shall not invest the rural authority with any new powers beyond the limits of such contributory place.

Local Government Board may invest rural authority with powers of urban authority. P.H. 1872, s. 24.

This section enables the Local Government Board to invest a rural authority with such urban powers as they may apply for, without altering in any way the constitution of the rural authority or their district.

The provision enabling the Board to declare any provisions of this Act in force in urban districts to be in force in rural districts is new, and is intended to apply to sections which do not confer powers or duties on the urban authority, but which are in force in their district.

The powers granted to rural authorities under this section will probably be chiefly those relating to new buildings and to scavenging. It would seem that powers relating to streets could not properly be conferred on a rural authority, as they might interfere with those of the highway authority.



Power of rural authority to form special drainage districts. P.H. 1872 s. 25.

CCLXXVII. It shall be lawful for a rural authority, by resolution to be approved by the Local Government Board, but not otherwise, to constitute any portion of the area within their jurisdiction a special drainage district, for the purpose of charging thereon exclusively the expenses of works of sewerage water supply or of other works, which by this Act are or by order of the Local Government Board may be declared to be special expenses, and thereupon such area shall become a separate contributory place.

See note to section 229.

Power to settle disputes as to boundaries of districts. P.H. 1874, s. 25.

CCLXXVIII. On the application of any urban authority (being a local board or improvement commissioners), the Local Government Board may, by order after local inquiry, settle any dispute as to the boundaries of the district of such authority; such order shall be published in some local newspaper circulating in the district to which it relates, and from and after its commencement shall be conclusive on the question determined by it.

As to the commencement of the order, see section 275.

#### *Union of Districts.*

Formation of united district. P.H. 1872, ss. 26, 27; and see S.U. 1867, ss. 10-14.

CCLXXIX. Where, on the application of the local authorities of any urban or rural districts, or of any of such authorities, it appears to the Local Government Board that it would be for the advantage of such districts, or any of them, or any parts thereof, or of any contributory places in any rural district or districts, to be formed into a united district for all or any of the purposes following, (that is to say,)

- (1.) The procuring a common supply of water; or
- (2.) The making a main sewer or carrying into effect a system of sewerage for the use of all such districts or contributory places; or
- (3.) For any other purposes of this Act;

the Local Government Board may by provisional order form such districts or contributory places into a united district.

All costs charges and expenses of and incidental to the formation of a united district shall, in the event of the united district being formed, be a first charge on the rates leviable in the united district in pursuance of this Act.

The provisions contained in this and the four following sections are taken from the Public Health Act 1872. No united district however was formed



under that Act, and it is not improbable that the power given to local authorities by section 285 of combining for the execution of works without the necessity of constituting a united district with its separate authority will prevent such districts from being formed unless in very exceptional cases.

As to provisional orders, sections 297, 298.

CCLXXX. The governing body of a united district shall be a joint board consisting of such ex-officio members and of such number of elective members as the Local Government Board may by the provisional order forming the district determine.

Governing  
body of  
united dis-  
trict.  
P.H. 1872,  
s. 28.

A joint board shall be a body corporate by such name as may be determined by the provisional order, having a perpetual succession and a common seal, with power to hold lands for the purposes of its constitution, without any license in mortmain.

CCLXXXI. The provisional order forming a united district under this Act shall define the purposes for which such united district is formed, and the powers rights duties capacities liabilities and obligations under this Act which the joint board is authorised to exercise or perform, or is made subject to, and shall contain regulations as to the qualification and mode of election of elective members of the joint board, as to their continuance in office, as to casual vacancies in the joint board, as to their meetings and officers, and any other matter or thing, including the adjustment of present and future liabilities and property with respect to which the Local Government Board may think fit to make any regulations for the better carrying into effect the provisions of this Act with respect to united districts.

Contents  
of provi-  
sional  
order  
forming  
united  
district.  
P.H. 1872,  
s. 29.

Upon the constitution of a joint board the local authorities having jurisdiction in the component districts or contributory places shall cease to exercise therein any powers, or to perform any duties, or to be subject to any liabilities or obligations, which the joint board is authorised to exercise or perform or is made subject to ; nevertheless, the joint board may delegate to the local authority of any component district the exercise of any of its powers or the performance of any of its duties.

CCLXXXII. Meetings of any joint board shall be held and the proceedings thereat shall be conducted (so far as such meetings and proceedings are not regulated by the order forming the joint board) in accordance with the rules as to meetings and proceedings contained in schedule I. to this Act.

Meetings  
and pro-  
ceedings  
of joint  
boards.  
P.H. 1872,  
s. 28.

Expenses  
of joint  
board.  
P.H. 1872,  
s. 30.

CCLXXXIII. Any expenses incurred by a joint board in pursuance of this Act, unless otherwise determined by the provisional order, shall be defrayed out of a common fund, to be contributed by the component districts or contributory places in proportion to the rateable value of the property in each district or contributory place, such value to be ascertained according to the valuation list in force for the time being.

Payment  
of contri-  
butions to  
joint  
board.  
P.H. 1872,  
s. 31.

CCLXXXIV. For the purpose of obtaining payment from component districts of the sums to be contributed by them, the joint board shall issue their precept to the local authority of each component district, stating the sum to be contributed by such authority, and requiring such authority, within a time limited by the precept, to pay the sums therein mentioned to the joint board, or to such person as the joint board may direct.

Any sum mentioned in a precept addressed by a joint board to a local authority as aforesaid shall be a debt due from that authority, and may be recovered accordingly, such contribution in the case of a rural authority being deemed to be general expenses.

If any local authority makes default in complying with the precept addressed to it, the joint board may, instead of instituting proceedings for the recovery of a debt, or in addition to such proceedings as to any part of a debt which may for the time being be unpaid, proceed in a summary manner as in this Act mentioned to raise within the district of the defaulting authority such sum as may be sufficient to pay the sum due.

For the purpose of obtaining payment from contributory places of the sums to be contributed by them, the joint board shall have the same powers of issuing precepts and of recovering the amounts named therein as if such contributory places formed a rural district, and the joint board were the authority thereof.

See sections 230 and 231. See also section 292.

Power to  
execute  
works in  
adjoining  
districts,  
and to  
combine  
for execu-  
tion of  
works.  
L.G., ss.  
27, 28.

CCLXXXV. Any local authority may, with the consent of the local authority of any adjoining district, execute and do in such adjoining district all or any of such works and things as they may execute and do within their own district, and on such terms as to payment or otherwise as may be agreed on between them and the local authority of the adjoining district; moreover two or more local authorities may combine together for the purpose of executing and maintaining any works that may be for the benefit of their

respective districts or any part thereof. All moneys which any local authority may agree to contribute for defraying expenses incurred under this section shall be deemed to be expenses incurred by them in the execution of works within their district.

In the case of a rural authority such expenses must be charged as general or special according to the nature of the works executed. Probably the works will usually relate to sewerage or water supply, and the expenses will then be special.

CCLXXXVI. Where it appears to the Local Government Board, on any representation made to it, that the appointment of a medical officer of health for two or more districts situated wholly or partially in the same county would diminish expense, or otherwise be for the advantage of such districts, the Local Government Board may by order unite such districts for the purpose of appointing a medical officer of health, and may make regulations as to the mode of his appointment and removal by representatives of the authorities of the constituent districts, and as to the meetings from time to time of such representatives, and the proportion in which the expenses of the appointment and of the salary and expenses of such officer are to be borne by such authorities, and as to any other matters (including the necessary expenses of such representatives) which, in the opinion of the said Board, require regulation for the purposes of this section ; and no other medical officer of health shall be appointed for any constituent district, except as an assistant to the officer appointed for the united districts :

S.U. 1865,  
s. 9.

Districts  
may be  
united for  
appoint-  
ing a  
medical  
officer of  
health.

Provided that no urban district containing a population of twenty-five thousand and upwards, or (in the case of a borough) having a separate court of quarter sessions, shall be included in any union of districts formed under this section without the consent of the local authority of such borough or other district.

Not less than twenty-eight days' notice that it is proposed to make an order under this section shall be given by the Local Government Board to the local authority of any district proposed to be included in the union, and if within twenty-one days after such notice has been given to any such authority they give notice to the Local Government Board that they object to the proposal, the Local Government Board may include their district in the union by a provisional order but not otherwise.

There may be assigned by the Local Government Board to the district medical officer of any union comprising or coincident with any constituent district such duties in rendering local assistance to



the medical officer of health appointed for the united districts as the said Board may think fit ; and such district medical officer shall receive, in respect of any duties so assigned to him, such additional remuneration to be paid by the local authority or authorities of the district or districts within which his duties under this section are performed as those authorities may, with the approval of the Local Government Board, determine.

This section is new ; see p. 21.

#### PORT SANITARY AUTHORITY.

See p. 21.

Constitu-  
tion of  
port sani-  
tary  
authority.  
P.H. 1872,  
s. 20.  
P.H. 1874,  
ss. 12, 14.

CCLXXXVII. The Local Government Board may, by provisional order, permanently constitute any local authority whose district or part of whose district forms part of or abuts on any part of a port in England, or the waters of such port, or any conservators commissioners or other persons having authority in or over such port or any part thereof, (which local authority conservators commissioners or other persons are in this Act referred to as a "riparian authority,") the sanitary authority of the whole of such port or of any part thereof (in this Act referred to as the "port sanitary authority").

Only one provisional order has hitherto been made and confirmed permanently constituting a port sanitary authority—viz., at Liverpool.

The Local Government Board may also by provisional order permanently constitute a port sanitary authority for the whole or any part of a port, by combining any two or more riparian authorities having jurisdiction within such port, or any part thereof, and may prescribe the mode of their joint action ; or by forming a joint board consisting of representative members of any two or more riparian authorities, in the same manner as is by this Act provided with respect to the formation of a united district. Moreover the Local Government Board may by provisional order permanently constitute a port sanitary authority for any two or more ports, by forming a joint board consisting of representative members of all or any of the riparian authorities having jurisdiction within such ports, or any part thereof.

The Sanitary Law Amendment Act 1874 enabled the Local Government Board to direct that representative members of riparian authorities should attend the meetings of the port sanitary authority. This power is not continued, but in lieu of it the Board are enabled to set up a joint board



consisting of representative members of riparian authorities. Two joint boards have thus been temporarily constituted—viz., for the ports of Hartlepool and Sunderland.

In any case in which the Local Government Board are by this section authorised permanently to constitute by provisional order a port sanitary authority, the said Board may, if it thinks fit, until such order has been made and confirmed by Parliament, temporarily constitute by order any such authority, and may from time to time renew any such last-mentioned order, and may by any order so made or renewed make any such provisions as it is by this section empowered to make by provisional order.

The express power of renewing orders temporarily constituting port sanitary authorities is new, and was inserted to remove any doubt on the subject. Orders temporarily constituting port sanitary authorities have been issued with respect to about forty ports.

Any order constituting a port sanitary authority may assign to such authority any powers rights duties capacities liabilities and obligations under this Act, and direct the mode in which the expenses of such authority are to be paid; and where such order constitutes a joint board the port sanitary authority, it may contain regulations with respect to any matters for which regulations may be made by a provisional order forming a united district under this Act.

A port shall mean a port as established for the purposes of the laws relating to the customs of the United Kingdom.

The powers and duties with which a port sanitary authority are usually invested are those relating to nuisances, to infectious diseases and hospitals, and to mortuaries. The obligation of appointing a medical officer of health and an inspector of nuisances is also imposed on them.

CCLXXXVIII. The order of the Local Government Board constituting a port sanitary authority shall be deemed to give such authority jurisdiction over all waters within the limits of such port, and also over the whole or such portions of the district within the jurisdiction of any riparian authority as may be specified in the order.

Jurisdiction of port sanitary authority. P.H. 1872, s. 21.

CCLXXXIX. A port sanitary authority may, with the sanction of the Local Government Board, delegate to any riparian authority within or bordering on their district the exercise of any powers conferred on such port sanitary authority by the order of the Local Government Board; but except in so far as such delegation may extend, no other authority shall exercise any powers conferred on

Delegation of powers by port sanitary authority. P.H. 1872 s. 20.

a port sanitary authority by the order of the Local Government Board within the district of such port sanitary authority.

Expenses  
of port  
sanitary  
authority.  
P.H. 1872,  
s. 21.

CCXC. Any expenses incurred by a port sanitary authority constituted temporarily in carrying into effect any purposes of this Act shall be defrayed out of a common fund to be contributed by the riparian authorities in such proportions as the Local Government Board thinks just.

The principle usually adopted by the Board in these cases appears to be to apportion the expenses between such of the riparian authorities as abut on the part of the port within the jurisdiction of the port sanitary authority according to the rateable value of their districts in the case of urban authorities; and of such of the contributory places within their districts as abut on the port in the case of rural authorities.

Such port sanitary authority, if itself a local authority under this Act independently of its character of a port sanitary authority, shall raise the proportion of expenses due in respect of its own district in the same manner as if such expenses had been incurred by it in the ordinary manner for the purposes of this Act.

For the purpose of obtaining payment from the contributory riparian authorities of the sums to be contributed by them, such port sanitary authority shall issue their precept to each such authority, requiring such authority, within a time limited by the precept, to pay the amount therein mentioned to such port sanitary authority, or to such person as such port sanitary authority may direct.

Any contribution payable by a riparian authority to such port sanitary authority shall be a debt due from them, and may be recovered accordingly, such contribution in the case of a rural authority being deemed general expenses of that authority. If any riparian authority makes default in complying with the precept addressed to it by such port sanitary authority, such port sanitary authority may, instead of instituting proceedings for the recovery of the debt, or in addition to such proceedings, as to any part of the debt which may for the time being be unpaid, proceed in the summary manner in this Act mentioned to raise within the district of the defaulting authority such sum as may be sufficient to pay the debt due.

Section 292.

P.H. 1874,  
s. 13.

Where several riparian authorities are combined in the district of one port sanitary authority the Local Government Board may

by order declare that some one or more of such authorities shall be exempt from contributing to the expenses incurred by such authorities.

CCXC. The mayor aldermen and commons of the City of London shall be the port sanitary authority of the port of London, and shall pay out of their corporate funds all their expenses as such port sanitary authority.

Provision  
as to port  
of London.  
P.H. 1872,  
s. 20.

CCXCII. Where any port sanitary authority joint board or other authority are authorised in pursuance of this Act to proceed in a summary manner to raise within the district of a defaulting authority such sum as may be sufficient to pay any debt due to them, the authority so authorised for the purpose of raising such sum shall, within the district of the defaulting authority, have, so far as relates to the raising such sum, the same powers as if they were the defaulting authority, and as if such sum were expenses properly incurred by the defaulting authority within the district of such authority.

Proceed-  
ings for  
for raising  
a sum for  
payment  
of debt  
within dis-  
trict of a  
defaulting  
authority.  
P.H. 1872,  
s. 54.

Where the defaulting authority have power to raise any moneys due for their expenses by levy of a rate from individual ratepayers, the authority so authorised as aforesaid shall have power to levy such a rate by any officer appointed by them, and the officer so appointed shall have the same powers, and the rate shall be levied in the same manner and be subject to the same incidents in all respects as if it were being levied by the officer of the defaulting authority for the payment of the expenses of that authority; and where the defaulting authority have power to raise moneys due for their expenses by issuing precepts, or otherwise requiring payments from any other authorities, the authority so authorised as aforesaid shall have the same power as the defaulting authority would have of issuing precepts, or otherwise requiring payment from such other authorities.

Any precepts issued by the authority so authorised as aforesaid for raising the sum due to them may be enforced in the same manner in all respects as if they had been issued by the defaulting authority.

The authority so authorised as aforesaid may, in making an estimate of the sum to be raised for the purpose of paying the debt due to them, add such sums as they think sufficient, not exceeding ten per cent. on the debt due, and may defray thereout all costs charges

and expenses (including compensation to any persons they may employ) to be incurred by such authority by reason of the default of the defaulting authority; and the authority so authorised as aforesaid shall apply all moneys raised by them in payment of the debt due to them, and such costs charges and expenses as aforesaid, and shall render the balance, if any, remaining in their hands after such application to the defaulting authority.

## PART IX.

### LOCAL GOVERNMENT BOARD.

#### *Inquiries by Board.*

Power of Board to direct inquiries. L.G., s. 79. 21 & 22 Vict. c. 97. s. 3.

CCXCIII. The Local Government Board may from time to time cause to be made such inquiries as are directed by this Act, and such inquiries as they see fit in relation to any matters concerning the public health in any place, or any matters with respect to which their sanction approval or consent is required by this Act.

Orders as to costs of inquiries. L.G., s. 81. San. 1869, s. 9.

CCXCIV. The Local Government Board may make orders as to the costs of inquiries or proceedings instituted by, or of appeals to the said Board under this Act, and as to the parties by whom or the rates out of which such costs shall be borne; and every such order may be made a rule of one of the superior courts of law on the application of any person named therein.

This section appears only to enable the Board to make orders as to costs incurred by themselves in relation to inquiries or proceedings instituted by them. In the case of appeals, however, it would seem that the Board may also deal with the costs of the parties.

Orders of Board under this Act. L.G., s. 81. P.H. 1872, s. 48.

CCXCV. All orders made by the Local Government Board in pursuance of this Act shall be binding and conclusive in respect of the matters to which they refer, and shall be published in such manner as that Board may direct.

This will not prevent the court from considering whether the order is *ultra vires*. See *Frewin v. Lewis*, 9 Sim. 66.

Power of inspectors of Local Government

CCXCVI. Inspectors of the Local Government Board shall, for the purposes of any inquiry directed by the Board, have in relation to witnesses and their examination, the production of papers and



accounts, and the inspection of places and matters required to be inspected, similar powers to those which Poor Law inspectors have under the Acts relating to the relief of the poor for the purposes of those Acts.

Board.  
P.H. 1872,  
s. 15.

See 4 and 5 Will. IV., c. 76.

*Provisional Orders by Board.*

CCXCVII. With respect to provisional orders authorised to be made by the Local Government Board under this Act, the following enactments shall be made :—

As to provisional orders made by Local Government Board.  
P.H. 1872,  
s. 45.

(1.) The Local Government Board shall not make any provisional order under this Act unless public notice of the purport of the proposed order has been previously given by advertisement in two successive weeks in some local newspaper circulating in the district to which such provisional order relates :

(2.) Before making any such provisional order, the Local Government Board shall consider any objections which may be made thereto by any persons affected thereby, and in cases where the subject matter is one to which a local inquiry is applicable, shall cause to be made a local inquiry, of which public notice shall be given in manner aforesaid, and at which all persons interested shall be permitted to attend and make objections :

Notice of the inquiry must now be given by advertisement in a local newspaper for two successive weeks. Under the old law the kind of public notice required was not specified.

(3.) The Local Government Board may submit to Parliament for confirmation any provisional order made by it in pursuance of this Act, but any such order shall be of no force whatever unless and until it is confirmed by Parliament :

(4.) If while the Bill confirming any such order is pending in either House of Parliament, a petition is presented against any order comprised therein, the Bill, so far as it relates to such order, may be referred to a Select Committee, and the petitioner shall be allowed to appear and oppose as in the case of private bills :

(5.) Any Act confirming any provisional order made in pursuance of any of the Sanitary Acts or of this Act, and

any Order in Council made in pursuance of any of the Sanitary Acts, may be repealed altered or amended by any provisional order made by the Local Government Board and confirmed by Parliament :

(6.) The Local Government Board may revoke, either wholly or partially, any provisional order made by them before the same is confirmed by Parliament, but such revocation shall not be made whilst the Bill confirming the order is pending in either House of Parliament :

(7.) The making of a provisional order shall be *prima facie* evidence that all the requirements of this Act in respect of proceedings required to be taken previously to the making of such provisional order have been complied with :

(8.) Every Act confirming any such provisional order shall be deemed to be a public general Act.

The provisions of the Municipal Corporations (Borough Funds) Act therefore do not apply to Acts for confirming provisional orders, as that Act does not relate to public general Acts. See the Act printed in Appendix II.

Costs of  
provi-  
sional  
orders.  
P.H. 1872,  
s. 47.

CCXCVIII. The reasonable costs of any local authority in respect of provisional orders made in pursuance of this Act, and of the inquiry preliminary thereto, as sanctioned by the Local Government Board, whether in promoting or opposing the same, shall be deemed to be expenses properly incurred for purposes of this Act by the local authority interested in or affected by such provisional orders, and such costs shall be paid accordingly ; and if thought expedient by the Local Government Board, the local authority may contract a loan for the purpose of defraying such costs.

It should be observed that the costs must be sanctioned by the Local Government Board though no loan is required for the purpose of defraying them.

*Power of Board to enforce performance of Duty by defaulting  
Local Authority.*

Proceed-  
ings on  
complaint  
to Board  
of default  
of local  
authority.  
San. 1866,  
s. 49.

CCXCIX. Where complaint is made to the Local Government Board that a local authority has made default in providing their district with sufficient sewers, or in the maintenance of existing sewers, or in providing their district with a supply of water, in cases where danger arises to the health of the inhabitants from the insufficiency or unwholesomeness of the existing supply of water,

and a proper supply can be got at a reasonable cost, or that a local authority has made default in enforcing any provisions of this Act which it is their duty to enforce, the Local Government Board, if satisfied, after due inquiry, that the authority has been guilty of the alleged default, shall make an order limiting a time for the performance of their duty in the matter of such complaint. If such duty is not performed by the time limited in the order, such order may be enforced by writ of mandamus, or the Local Government Board may appoint some person to perform such duty, and shall by order direct that the expenses of performing the same, together with a reasonable remuneration to the person appointed for superintending such performance, and amounting to a sum specified in the order, together with the costs of the proceedings, shall be paid by the authority in default; and any order made for the payment of such expenses and costs may be removed into the Court of Queen's Bench, and be enforced in the same manner as if the same were an order of such Court.

P.H. 1874,  
s. 20.

Any person appointed under this section to perform the duty of a defaulting local authority shall, in the performance and for the purposes of such duty, be invested with all the powers of such authority other than (save as herein-after provided) the powers of levying rates; and the Local Government Board may from time to time by order change any person so appointed.

S.U. 1867,  
s. 2.

San. 1869,  
s. 8.

See definition of "expenses" in section 302.

With regard to the powers of the person appointed to discharge the duty of a defaulting authority, see *R. v. Cockerell*, L. R. 6 Q. B. 252.

CCC. Any sum specified in an order of the Local Government Board for payment of the expenses of performing the duty of a defaulting local authority, together with the costs of the proceedings, shall be deemed to be expenses properly incurred by such authority, and to be a debt due from such authority, and payable out of any moneys in the hands of such authority or of their officers, or out of any rate applicable to the payment of any expenses properly incurred by such authority, which rate is in this part of this Act referred to as "the local rate." If the defaulting authority refuses to pay any such sum, with costs, as aforesaid, for a period of fourteen days after demand, the Local Government Board may by order empower any person to levy, by and out of the local rate, such sum (the amount to be specified in the order) as may, in the opinion of the Local Government Board, be

Further  
provision  
for  
recovery  
of ex-  
penses.  
San. 1863,  
s. 8.

sufficient to defray the debt so due from the defaulting authority, and all expenses incurred in consequence of the nonpayment of such debt.

Any person or persons so empowered shall have the same powers of levying the local rate, and requiring all officers of the defaulting authority to pay over any moneys in their hands, as the defaulting authority would have in the case of expenses legally payable out of a local rate to be raised by such authority ; and the said person or persons, after repaying all sums of money so due in respect of the order, shall pay the surplus, if any, (the amount to be ascertained by the Local Government Board,) to or to the order of the defaulting authority.

Power of Board to borrow to defray expenses of performing duty of defaulting authority. San. 1869, ss. 4, 5.

CCCI. The Local Government Board may from time to time certify the amount of expenses that have been incurred, or an estimate of the expenses about to be incurred, by any person appointed by the said Board under this Act to perform the duty of a defaulting local authority ; also, the amount of any loan required to be raised for the purpose of defraying any expenses that have been so incurred, or are estimated as about to be incurred ; and the certificate of the said Board shall be conclusive as to all matters to which it relates.

Whenever the Local Government Board so certifies a loan to be required, the Public Works Loan Commissioners may advance to the Local Government Board, or to any person appointed as aforesaid, the amount of the loan so certified to be required on the security of the local rate, without requiring any other security ; and the Local Government Board, or the person so appointed, may, by any instrument duly executed, charge the local rate with the repayment of the principal and interest due in respect of such loan, and every such charge shall have the same effect as if the defaulting local authority were empowered to raise such loan on the security of the local rate, and had duly executed an instrument charging the same on the local rate.

For definition of "local rate" see section 300. The Public Works Loan Commissioners cannot make advances for this purpose under section 243, so the money must under the existing regulations be borrowed at not less than five per cent., and be repaid within twenty years.

Recovery of principal and interest.

CCCII. Any principal money or interest for the time being due in respect of any loan under this Act made for payment of the expenses incurred or to be incurred in the performance of the duty



of a defaulting local authority shall be taken to be a debt due from such authority, and, in addition to any other remedies, may be recovered in the manner in which a debt due from a defaulting authority may be recovered in pursuance of the provisions of this part of this Act.

See section 300.

The surplus (if any) of any such loan, after payment of the expenses aforesaid, shall, on the amount thereof being certified by the Local Government Board, be paid to or to the order of the defaulting authority.

“Expenses,” for the purposes of the provisions of this part of this Act relating to defaulting local authorities, shall include all sums payable under those provisions by or by the order of the Local Government Board, or the person appointed by that Board.

*Powers of Board in relation to Local Acts, etc.*

CCCCIII. The Local Government Board may, on the application of the local authority of any district, by provisional order, wholly or partially repeal alter or amend any Local Act, other than an Act for the conservancy of rivers which is in force in any area comprising the whole or part of any such district, and not conferring powers or privileges on any persons or person for their or his own pecuniary benefit, which relates to the same subject matters as this Act.

Power to  
repeal and  
alter local  
Acts.  
L.G., s. 77.  
P.H. 1872,  
s. 33.  
P.H. 1874,  
s. 18.  
P.H. 1874,  
s. 16.

Any such provisional order may provide for the extension of the provisions of the Local Act referred to therein beyond the district or districts within the limits of such Act, or for the exclusion of the whole or a portion of any such district from the application of such Act; and may provide what local authority shall have jurisdiction for the purposes of this Act in any area which is by such order included in or excluded from such district.

Where a local Act is in force in more than one sanitary district the application of the local authority of one of such districts will be sufficient without the concurrence of the others.

The power of making express provision as to what local authority is to have jurisdiction in the included or excluded part is new.

CCCCIV. On the application of any authority from whom or to whom any powers rights duties capacities liabilities obligations and property, or any of them, are at any time transferred or

Settlement  
of differ-  
ences  
arising

out of  
transfer of  
powers or  
property  
to local  
authority.  
P.H. 1872,  
s. 39.  
P.H. 1874,  
s. 17.

alleged or claimed to be transferred in pursuance of this Act, or any provisional order made thereunder, or on the application of any person affected by such transfer, the Local Government Board may by order settle any doubt or difference, and adjust any accounts arising out of or incidental to such powers rights duties capacities liabilities obligations or property, or to the transfer thereof, and direct the parties by whom and to whom any moneys found to be due are to be paid, and the mode of raising such moneys ; and any provisions contained in any order so made shall be deemed to have been made in pursuance of and to be within the powers conferred by this section, subject to this proviso, that where any such order directs any rate to be made, or other act or thing to be done, which the party required to make or do would not, apart from the provisions of this Act, have been enabled to make or do by law, such order shall be provisional only until it has been confirmed by Parliament.

Any settlement or adjustment under this section may be included in any provisional order which gives rise to the same.

## PART X.

### MISCELLANEOUS AND TEMPORARY PROVISIONS.

#### MISCELLANEOUS.

Entry on  
lands for  
purposes  
of Act.  
P.H., s.  
143.  
S.U. 1865,  
s. 5.

CCCV. Whenever it becomes necessary for a local authority or any of their officers to enter examine or lay open any lands or premises for the purpose of making plans surveying measuring taking levels making keeping in repair or examining works, ascertaining the course of sewers or drains, or ascertaining or fixing boundaries, and the owner or occupier of such lands or premises refuses to permit the same to be entered upon examined or laid open for the purposes aforesaid or any of them, the local authority may, after written notice to such owner or occupier, apply to a court of summary jurisdiction for an order authorising the local authority to enter examine and lay open the said lands and premises for the purposes aforesaid or any of them.

If no sufficient cause is shown against the application the court

may make an order accordingly, and on such order being made the local authority or any of their officers may, at all reasonable times between the hours of nine in the forenoon and six in the afternoon, enter examine or lay open the lands or premises mentioned in such order, for such of the said purposes as are therein specified, without being subject to any action or molestation for so doing : Provided that, except in case of emergency, no entry shall be made or works commenced under this section unless at least twenty-four hours' notice of the intended entry, and of the object thereof, be given to the occupier of the premises intended to be entered.

The words "making" and "keeping in repair" in line 4 of the section are new. Moreover the hours are extended from ten and four to nine and six. As to form and service of notices, see sections 266, 267.

CCCVI. Any person who wilfully obstructs any member of the local authority, or any person duly employed in the execution of this Act, or who destroys pulls down injures or defaces any board on which any byelaw notice or other matter is inscribed, shall, if the same was put up by authority of the Local Government Board or of the local authority, be liable for every such offence to a penalty not exceeding five pounds.

Penalty on obstructing execution of Act. P.H., s. 148. N.R. 1855, ss. 36, 37.

Where the occupier of any premises prevents the owner thereof from obeying or carrying into effect any provisions of this Act, any justice to whom application is made in this behalf shall, by order in writing, require such occupier to permit the execution of any works required to be executed, provided that the same appear to such justice to be necessary for the purpose of obeying or carrying into effect the provisions of this Act ; and if within twenty-four hours after the making of the order such occupier fails to comply therewith, he shall be liable to a penalty not exceeding five pounds for every day during the continuance of such non-compliance.

If the occupier of any premises, when requested by or on behalf of the local authority to state the name of the owner of the premises occupied by him, refuses or wilfully omits to disclose or wilfully mis-states the same, he shall (unless he shows cause to the satisfaction of the court for his refusal) be liable to a penalty not exceeding five pounds.

As to recovery and application of penalties, see Part VII. Legal Proceedings.

CCCVII. Any person who wilfully damages any works or property belonging to any local authority shall, in cases where no

Penalty on damaging works, etc. of local

authority.  
L.G., s. 66.  
San. 1866,  
s. 45.

other penalty is provided by this Act, be liable to a penalty not exceeding five pounds.

Compensation in  
case of  
damage by  
local  
authority.  
P.H.s. 144.  
S.U. 1865,  
s. 8.

CCCVIII. Where any person sustains any damage by reason of the exercise of any of the powers of this Act, in relation to any matter as to which he is not himself in default, full compensation shall be made to such person by the local authority exercising such powers; and any dispute as to the fact of damage or amount of compensation shall be settled by arbitration in manner provided by this Act, or if the compensation claimed does not exceed the sum of twenty pounds, the same may at the option of either party be ascertained by and recovered before a court of summary jurisdiction.

This section applies to cases of damage caused by acts of the local authority sanctioned by the statute which if caused by a private person would be actionable; *Hall v. Mayor etc. of Bristol*, L. R. 2 C. P. 322; 36 L. J., C. P. 110; but not to cases where the act of the local authority is *ultra vires* and not sanctioned by the statute. In the latter case the remedy is by action, *R. v. Darlington Local Board*, 33 L. J., Q. B. 305. As to issue of mandamus, *R. v. Burslem Local Board*, 28 L. J., Q. B. 345.

As to arbitration, *Bradby v. Southampton Local Board*, 24 L. J., Q. B. 239; *Bradford Local Board v. Hopwood*, 6 W. R. 818. Owner held entitled to compensation where the access to his house was rendered dangerous by works executed by the local authority. *R. v. Wallasey Local Board*, L. R. 4 Q. B. 351.

For the provisions as to arbitration, see sections 179-81.

Compensation in  
certain  
cases to  
officers.  
P.H. 1872,  
s. 33.  
P.H. 1874,  
s. 18.

CCCIX. If any officer of any trustees commissioners or other body of persons intrusted with the execution of any Local Act, whether acting exclusively under the Local Act, or partly under the Local Act and partly under the Local Government Acts, or any officer of any sanitary authority under the Sanitary Acts by this Act repealed, or of any local authority under this Act, is, by or in pursuance of the Public Health Act 1872, or of this Act, or of any provisional order made in pursuance of either of those Acts, removed from his office, or deprived of the whole or part of the emoluments of his office, and does not afterwards receive remuneration to an equal amount in respect of some office or employment under or by the authority of any district under this Act, the Local Government Board may by order award to such officer such compensation as the said Board may think just; and such compensation may be by way of annuity or otherwise, and shall be paid by the local authority of the district in which such officer held his office out of any rates applicable to the general purposes of this Act within that district.



CCCX. Where after the passing of this Act a district or part of a district under the jurisdiction of improvement commissioners, or a district or part of a district under the jurisdiction of a local board, is constituted or included in a borough, all the powers rights duties capacities liabilities obligations and property exerciseable by attaching to or vested in such improvement commissioners or local board (as the case may be) under this Act, or under any local Act for purposes the same as or similar to those of this Act, or under any general Act of Parliament, within or for the benefit of such district or part of a district, shall pass to and be exerciseable by and vested in the council of such borough.

Provision where improvement Act district or local government district becomes a borough.

The transfer by virtue of the Public Health Act 1872, of the powers rights duties capacities liabilities obligations and property of any local board or improvement commissioners to an urban sanitary authority, shall be deemed to have included all powers rights duties capacities liabilities obligations and property exerciseable by attaching to or vested in such local board or improvement commissioners as a burial board under any general Act of Parliament.

See section 49 of the Local Government Act 1858, section 21 of the Local Government Amendment Act 1861, and section 44 of the Sanitary Act 1866 re-enacted in part III. of schedule IV.

The last paragraph of this section is new.

CCCXI. Any local board constituted either before or after the passing of this Act may, with the sanction of the Local Government Board, change their name. Every such change of name shall be published in such manner as the Local Government Board may direct. No such change of name shall affect any rights or obligations of the local board, or render defective any legal proceedings instituted by or against the local board; and any legal proceedings may be continued or commenced against the local board by their new name which might have been continued or commenced against the local board by their former name.

Power of local boards to change name.

This section is new: changes in local circumstances may not unfrequently render the existence of such a power desirable.

CCCXII. The retirement and mode of election of members of any authority invested by any local Act with powers of town government and rating, whose retirement and mode of election were at the time of the passing of this Act regulated by the Local Government Acts, shall be regulated in all respects by the rules

As to election of certain improvement commissioners, etc.

L.G. Am.,  
s. 2. for election of local boards contained in schedule II. to this Act ; but this enactment shall not affect the qualification fixed for members of such authority by the local Act under which such authority are constituted, or the qualification and tenure of office of any *ex-officio* members of such authority.

The Local Government Acts are defined in schedule IV.

Substitu-  
tion in  
other Acts  
of provi-  
sions of  
this Act  
for provi-  
sions of  
repealed  
Acts.

CCCXIII. Where in any Act, or order made by one of Her Majesty's Principal Secretaries of State or by the Local Government Board and in force at the time of the passing of this Act or in any document, any provisions of any of the Sanitary Acts which are repealed by this Act are mentioned or referred to, such Act order or document shall be read as if the provisions of this Act applicable to purposes the same as or similar to those of the repealed provisions were therein mentioned or referred to instead of such repealed provisions and were substituted for the same ; nevertheless those substituted provisions shall have effect subject to any modification or restriction in such Act order or document expressed in relation to the repealed provisions therein mentioned or referred to.

Byelaws  
as to hop-  
pickers.  
P.H. 1874,  
s. 45.

CCCXIV. Any local authority may, if they think fit, make byelaws for securing the decent lodging and accommodation of persons engaged in hop-picking within the district of such authority.

As to byelaws generally, see sections 182-6.

As to bye-  
laws in-  
consistent  
with this  
Act.

CCCXV. Any byelaw made by any sanitary authority under the Sanitary Acts which is inconsistent with any of the provisions of this Act shall so far as it is inconsistent therewith be deemed to be repealed.

For definition of the Sanitary Acts see section 4.

As to con-  
struction  
of incor-  
porated  
Acts.  
L.G., s. 7.

CCCXVI. In the construction of the provisions of any Act incorporated with this Act the term "the special Act" includes this Act, and, in the case of the Lands Clauses Consolidation Acts, 1845, 1860, and 1869, any order confirmed by Parliament and authorising the purchase of lands otherwise than by agreement under this Act ; the term "the limits of the special Act" means the limits of the district ; and the urban or rural authority shall

be deemed to be “the promoters of the undertaking,” “the commissioners,” or “the undertakers,” as the case may be.

All penalties incurred under the provisions of any Act incorporated with this Act shall be recovered and applied in the same way as penalties incurred under this Act.

See Part VII.—Legal Proceedings.

CCCXVII. The schedules to this Act shall be read and have effect as part of this Act. Construe-  
tion of  
schedules.

The forms contained in schedule IV. to this Act, or forms to the like effect, varied as circumstances may require, may be used and shall be sufficient for all purposes.

The forms in the schedule are not obligatory, but their adoption will tend greatly to simplify and facilitate procedure.

#### TEMPORARY PROVISIONS.

CCCXVIII. Nothing in this Act shall affect the rights or position of any clerk or treasurer the tenure of whose office is regulated by section twelve of the Public Health Act 1872. As to clerk  
and  
treasurer  
of certain  
autho-  
rities.  
P.H. 1872,  
s. 12.

This section refers to cases in which a town council or improvement commissioners being at the passing of the Public Health Act 1872 a local board had appointed in their capacity of local board a different person as clerk or treasurer from the person who was their clerk or treasurer in their capacity of council or improvement commissioners.

CCCXIX. Nothing in this Act shall affect the making and levying of any special district rates, or the discharge of sums borrowed on the credit of any special district rates, or any right or remedy for the recovery of the same, under any provision of the Local Government Acts in force at the time of the passing of this Act. As to  
special dis-  
trict rates.  
See L.G.,  
s. 54. (1.)  
L.G. Am.,  
ss. 12, 13.

The provision of the Public Health Act 1848 enabling special district rates to be levied was repealed by section 54 (1) of the Local Government Act 1858, with a saving of the power to make such rates to satisfy debts already incurred on their security. It is possible that some such debts may still be outstanding: hence the insertion of this section.

CCCXX. Where under the provisions of any local Act in that behalf any expenses directed by this Act to be paid in the case of a council of a borough out of the borough fund or borough rate were, before the passing of the Public Health Act 1872, divided between landlord and tenant in moieties or otherwise, the Local Government Board may, on the application either of landlord or tenant, by order make provision for the continuance of such Division  
of ex-  
penses  
between  
landlord  
and tenant  
in certain  
cases.  
P.H. 1874,  
s. 8.

division of expenses during the continuance of any contract existing between them at the passing of the last-mentioned Act.

Validity of  
certain  
securities.  
P.H. 1872,  
s. 46.

CCCXXI. Where by any sanction to a loan given or by any provisional order made under the Sanitary Acts, it is directed that the sums borrowed shall be repaid within a limited period of years from the date of the borrowing thereof, any security which has been given for a sum so borrowed shall not be invalid by reason of the sum having been made repayable within a period less than the period so limited.

It is difficult to see the necessity for this enactment, though the corresponding section of the Public Health Act 1872 is understood to have been inserted in consequence of an opinion of the law officers of the Crown. For definition of the Sanitary Acts see section 4.

As to  
certain  
turnpike  
trustees.  
P.H. 1874,  
s. 3.

CCCXXII. Where by any local Act powers are conferred on any turnpike trustees for any purposes the same as or similar to any of the purposes of the Sanitary Acts or of this Act, such trustees shall not be deemed to be an urban authority under this Act, but all their powers and obligations under such local Act for such purposes shall be transferred to the local authority within whose district the area to which such local Act applies is contained.

This section was introduced to meet an isolated case of a Turnpike Act containing sanitary provisions.

As to main  
sewerage  
districts  
and joint  
sewerage  
boards.  
11 & 12  
Vict. c. 63.  
P.H. 1872,  
s. 58.  
S.U. 1867,  
ss. 10-14.

CCCXXIII. Where any district has been constituted in pursuance of the provisions of the Public Health Act 1848, for the purposes of main sewerage only, or where a district has been formed subject to the jurisdiction of a joint sewerage board in pursuance of the Sewage Utilization Act 1867, the Local Government Board may by provisional order dissolve such district, or may constitute such district a united district subject to the jurisdiction of a joint board in manner provided by this Act, without application previous to the making of any such order; and until an order has been made by the Local Government Board under this section, the authority of any such district shall continue to be the authority thereof and their members shall be elected as if this Act had not passed: Provided that the provisions of this Act applicable to purposes the same as or similar to those of any enactments of the Sanitary Acts which are in force within the district of any such authority at the time of the passing of this Act



and are repealed by this Act shall be deemed to be substituted for those enactments.

Any order made under this section may if necessary provide for the settlement of any differences or the adjustment of any accounts or the apportionment of any liabilities arising between districts parishes or other places in consequence of the exercise of any of the powers conferred by this section, and may direct the persons by and to whom any moneys found to be due are to be paid and the mode of raising such moneys.

This section meets two or three exceptional cases.

CCCXXIV. The accounts of any urban or rural sanitary authority under the Sanitary Acts by this Act repealed, not audited at the time of the passing of this Act, shall be deemed for the purposes of audit to be accounts of such authority under this Act.

As to audit of certain accounts.

CCCXXV. The power conferred by section twenty of "The Public Health Act, 1872," of temporarily constituting a port sanitary authority shall be deemed to have authorised a renewal from time to time of any order made under that section.

As to certain orders under section 20 of 35 & 36 Vict. c. 79.

## PART XI.

### SAVING CLAUSES AND REPEAL OF ACTS.

#### SAVING CLAUSES.

CCCXXVI. All urban sanitary authorities and rural sanitary authorities existing at the time of the passing of this Act shall be deemed to be urban authorities and rural authorities under this Act ; and all joint boards, port sanitary authorities, committees of rural sanitary authorities, and parochial committees, and all local government districts constituted in pursuance of the Sanitary Acts and existing at the time of the passing of this Act, shall be deemed to be joint boards, port sanitary authorities, committees of rural sanitary authorities, and parochial committees, and local government districts under this Act ; and the members of all the above-mentioned bodies shall hold office (subject to the provisions of this Act respecting the election of members of local boards) for such time as they would respectively have held office if this Act had not

Provision as to the sanitary authorities existing at the passing of this Act and their officers, etc.

been passed ; and the officers and servants of all the above-mentioned bodies shall continue to hold their several offices and employments on the same terms and subject to the same conditions, as to duties remuneration and otherwise, as they would have held them if this Act had not been passed ; and all byelaws duly made under any of the Sanitary Acts by this Act repealed and not inconsistent with any of the provisions of this Act shall be deemed to be byelaws under this Act ; and all the provisions of this Act shall apply to all such bodies existing at the time of the passing of this Act, and to their several officers and servants, in substitution for the provisions of the Sanitary Acts by this Act repealed, but so as not to affect any right acquired or liability incurred under the Sanitary Acts, or any of them, before the passing of this Act, and existing at the time of the passing of this Act.

See p. 17 ; and as to the election of local boards, schedule II.

Saving for  
works and  
property  
of certain  
authori-  
ties, and  
for naviga-  
tion and  
water  
rights, etc.  
L.G., s. 68.

CCCXXVII. Nothing in this Act shall be construed to authorise any local authority—

- (1.) To use injure or interfere with any sluices floodgates sewers groynes or sea defences or other works, already or hereafter made under the authority of any commissioners of sewers appointed by the Crown, or any sewers or other works already or hereafter made and used by any body of persons or person for the purpose of draining preserving or improving land under any local or private Act of Parliament, or for the purpose of irrigating land ; or
- (2.) To disturb or interfere with any lands or other property vested in the Lord High Admiral of the United Kingdom or the Commissioners for executing the office of the Lord High Admiral for the time being or in Her Majesty's Principal Secretary of State for the War Department for the time being ; or

The saving for property of the Admiralty is new.

- (3.) To interfere with any river canal dock harbour lock reservoir or basin, so as to injuriously affect the navigation thereon, or the use thereof, or to interfere with any towing-path so as to interrupt the traffic thereof, in cases where any body of persons or person are or is by virtue of any Act of Parliament entitled to navigate on or use such river canal dock harbour lock reservoir or basin, or

to receive any tolls or dues in respect of the navigation thereon or use thereof ; or

Injunction granted to restrain a local board from interfering with the supply of water to a canal.—*Grand Junction Canal Co. v. Shugar*, L. R. 6 Ch. 483.

(4.) To interfere with any watercourse in such manner as to injuriously affect the supply of water to any river canal dock harbour reservoir or basin, in cases where any such body of persons or person as last aforesaid would, if this Act had not passed, have been entitled by law to prevent or be relieved against such interference ; or

(5.) To interfere with any bridges crossing any river canal dock harbour or basin, in cases where any body of persons or person are or is authorised by virtue of any Act of Parliament to navigate or use such river canal dock harbour or basin, or to demand any tolls or dues in respect of the navigation thereon, or use thereof ; or

(6.) To execute any works in through or under any wharves quays docks harbours or basins, to the exclusive use of which any body of persons or person are or is entitled by virtue of any Act of Parliament, or for the use of which any body of persons or person are or is entitled by virtue of any Act of Parliament to demand any tolls or dues,—

Without the consent in every case of such Lord High Admiral or Commissioners for executing the office of Lord High Admiral, Secretary of State, commissioners, body of persons or person as are herein-before in that behalf respectively mentioned, such consent to be expressed in writing, in the case of a corporation under their common seal, and in the case of any body of persons not being a corporation under the hand of their clerk or other duly authorised officer or agent. And nothing in this Act shall prejudice or affect the rights privileges powers or authorities given or reserved to any person under such local or private Acts for draining preserving or improving land as are in this section mentioned.

CCCXXVIII. Where any matters or things proposed to be done by any local authority, and not being within the prohibition aforesaid, interfere with the improvement of any river canal dock harbour lock reservoir basin or towing-path which any body of persons or person are or is entitled by virtue of any

Reference to arbitration in case of works not within preceding section. L.G., s. 69.

Act of Parliament to navigate on or use, or in respect of the navigation whereon or use whereof to demand any tolls or dues, or interfere with any works belonging to such river canal dock harbour or basin, or with any land necessary for the enjoyment or improvement thereof, the local authority shall give to such body of persons or person a notice specifying the particulars of the matters and things so intended to be done. If the parties on whom such notice is served do not consent to the requisitions thereof, the matter in difference shall be referred to arbitration; and the following questions shall be decided by such arbitration; (that is to say,)

(1.) Whether the matters or things proposed to be done by the local authority will cause any injury to such river canal dock harbour basin towing-path works or land, or to the enjoyment or improvement of such river canal dock harbour or basin as aforesaid :

(2.) Whether any injury that may be caused by such matters or things, or any of them, is or is not of a nature to admit of being fully compensated by money.

Effect of  
arbitra-  
tion.  
L.G., s. 70.

CCCXXIX. The result of any such arbitration shall be final, and the local authority shall do as follows; (that is to say,)

(1.) If the arbitrators are of opinion that no injury will be caused, the local authority may forthwith proceed to do the proposed matters and things :

(2.) If the arbitrators are of opinion that injury will be caused, but that such injury is of a nature to admit of being fully compensated by money, they shall proceed to assess such compensation; and on payment of the amount so assessed, but not before, the local authority may proceed to do the proposed matters and things :

(3.) If the arbitrators are of opinion that injury will be caused, and that it is not of a nature to admit of being fully compensated by money, the local authority shall not proceed to do any matter or thing in respect of which such opinion may be given.

Provision  
as to  
transfer of  
powers,  
etc.  
L.G., s. 71.

CCCXXX. No transfer of powers and privileges under this Act shall deprive any body of persons or person authorised by virtue of any Act of Parliament to navigate on any river or canal, or to demand for their or his own benefit in respect of such navigation



any tolls or dues, of such powers and privileges as are vested in them by any Act of Parliament in relation to such river or canal.

CCCXXXI. Any body of persons or person authorised by virtue of any Act of Parliament to navigate on or use any river canal doek harbour or basin, or to demand any tolls or dues in respect of the navigation on such river or canal, or the use of such doek harbour or basin, may, at their own expense, and on substituting other sewers drains culverts and pipes equally effectual, and certified as such by the surveyor to the local authority, take up, divert, or alter the level of any sewers drains culverts or pipes constructed by any local authority, and passing under or interfering with such rivers canals docks harbours or basins, or the towing-paths thereof, and may do all such things as may be necessary for carrying into effect such taking up diversion or alteration.

Provision as to alteration of sewers. L.G., s. 72.

CCCXXXII. Nothing in this Act shall be construed to authorise any local authority to injuriously affect any reservoir canal river or stream or the feeders thereof or the supply quality or fall of water contained in any reservoir canal river stream or in the feeders thereof, in cases where any body of persons or person would, if this Act had not passed, have been entitled by law to prevent or be relieved against the injuriously affecting such reservoir canal river stream feeders or such supply quality or fall of water, unless the local authority first obtain the consent in writing of the body of persons or person so entitled as aforesaid.

Saving for water rights generally. L.G., s. 73. N.R. 1855, ss. 44, 45.

Remedy under the circumstances held to be by action and not by mandamus. *R. v. Darlington Local Board*, 10 Jur. (N. S.) 1196; 35 L. J., Q. B. 45.

CCCXXXIII. Any difference of opinion that may arise between a local authority and any such body of persons or person as aforesaid, whether any sewers drains culverts or pipes substituted under the powers of this Act for sewers drains culverts or pipes constructed or laid down by any local authority are equally effectual with those for which they are substituted, or whether the supply quality or fall of water in any such reservoir canal river or stream as last aforesaid is injuriously affected by the exercise of powers under this Act, may, at the option of the party complaining, be determined by arbitration in manner by this part of this Act provided. The arbitrators shall decide the same questions as to the alleged injury, and the local authority shall proceed in

Arbitration as to alteration of sewers injuriously affecting supply of water, etc. L.G., s. 74.

the same way as is by this Act provided with regard to arbitrations in cases of alleged injury to rivers canals docks harbours and basins.

Sections 328, 329.

Saving for  
mines, etc.  
N.R. 1855,  
s. 44.

CCCCXXXIV. Nothing in this Act shall be construed to extend to mines of different descriptions so as to interfere with or to obstruct the efficient working of the same; nor to the smelting of ores and minerals, nor to the calcining puddling and rolling of iron and other metals, nor to the conversion of pig iron into wrought iron, so as to obstruct or interfere with any of such processes respectively.

The exemption of manufactories of ores and minerals contained in section 44 of the Nuisances Removal Act of 1855 was, when taken in connexion with the provisions relating to nuisances in the Sanitary Act 1866, of doubtful construction and has been omitted. See *Norris v. Barnes*, L. R. 7 Q. B. 537.

Saving for  
collegiate  
bodies and  
Govern-  
ment  
depart-  
ments.  
P.H. 1872,  
s. 56.

CCCCXXXV. Any collegiate or other corporate body required or authorised by or in pursuance of any Act of Parliament to divert its sewers or drains from any river, or to construct new sewers, and any public department of the Government, shall have the like powers and be subject to the like obligations under this Act as they had or were subject to under the Sewage Utilization Act 1867; and for that purpose the provisions of this Act applicable to purposes the same as or similar to those of the Sewage Utilization Act 1865 and the Sewage Utilization Act 1867 shall apply in substitution for the last-mentioned provisions.

The effect of this section is to give to the collegiate and other bodies mentioned therein the powers conferred on local authorities by part II. of this Act for the construction repair and cleansing of sewers etc. and for the disposal of sewage.

Saving for  
Metropoli-  
tan Board  
of Works.  
P.H. 1872,  
s. 57.

CCCCXXXVI. Nothing in or done under this Act shall affect any outfall or other works of the Metropolitan Board of Works (although beyond the Metropolis) executed under the Metropolis Management Act 1855, and the Acts amending the same, or take away, abridge, or prejudicially affect any right power authority jurisdiction or privilege of the Metropolitan Board of Works.

Saving for  
payment  
in certain  
cases to  
local  
authority.

CCCCXXXVII. Nothing in this Act shall affect the payment or recovery of any yearly sum payable at the time of the passing of this Act in pursuance of the Local Government Act 1858 Amendment Act 1861, to any local authority in respect of any premises

without their district which have a drain communicating with a sewer within their district: Provided that any such sum shall cease to be payable, if and when the connexion between the drain and the sewer is discontinued, from the time of such discontinuance; but if after the discontinuance the connexion is re-established, the yearly sum shall again become payable, and so from time to time.

Sec L.G.  
Am., s. 8.

It is possible that agreements made under the section of the Local Government Act (1858) Amendment Act 1861, referred to in the margin, may be still in force: hence the introduction of this saving.

CCCXXXVIII. All rates orders acts or things made assessed performed or done, before the passing of this Act, by any authority purporting to act under the powers conferred on them by a local Act with respect to any sanitary purposes shall be valid, notwithstanding the passing of the Public Health Act 1872, or of this Act.

Saving for  
acts of  
authori-  
ties under  
certain  
local Acts.  
P.H. 1874,  
ss. 3, 4.

CCCXXXIX. Nothing in this Act shall affect the composition of any local board constituted by any Order in Council or any provisional order made under the Public Health Act 1848, and confirmed by Parliament, or the qualification or number of members of any such board; but any such Order in Council, or order so confirmed, or the Act confirming any such last-mentioned order, may be repealed altered or amended in manner provided by this Act.

Saving for  
certain  
local  
boards.  
L.G., s. 5.

This section saves the composition of existing local boards constituted under the provisions of the Public Health Act 1848 explained at pages 3 and 4 and the qualification and number of their members. For the manner of repeal etc. see section 297 (5).

CCCXL. Where within the district of a local authority any local Act is in force, providing for purposes the same as or similar to the purposes of this Act, proceedings may be instituted at the discretion of the authority or person instituting the same, either under the local Act or this Act, or under both, subject to these qualifications:

Saving for  
proceed-  
ings under  
local Acts.  
P.H. 1872,  
s. 55.

- (1.) That no person shall be punished for the same offence both under a local Act and this Act; and
- (2.) That the local authority shall not, by reason of any local Act in force within their district, be exempted from the performance of any duty or obligation to which they may be subject under this Act.

Powers of  
Act to be  
cumula-  
tive.  
P.H., ss.  
65, 134.  
N.R. 1855,  
s. 43.  
San. 1866,  
s. 55.  
S.U. 1867,  
s. 19.  
San. 1868,  
s. 9.  
P.H. 1872,  
s. 59.

CCCXLI. All powers given by this Act shall be deemed to be in addition to and not in derogation of any other powers conferred by Act of Parliament law or custom, and such other powers may be exercised in the same manner as if this Act had not passed ; and nothing in this Act shall exempt any person from any penalty to which he would have been subject if this Act had not passed.

Provided that no person who has been adjudged to pay any penalty in pursuance of this Act shall for the same offence be liable to a penalty under any other Act.

### *Oxford.*

Constitu-  
tion of  
local  
board of  
the  
Oxford  
district.  
L.G., s. 82.  
27 & 28  
Vict. c. 68.  
28 & 29  
Vict. c.  
108.

CCCXLII. The local government district of Oxford shall be subject to the jurisdiction of a local board consisting of the vice-chancellor of the university of Oxford and the mayor of Oxford for the time being, of forty-five other members, fifteen to be elected by the university of Oxford, sixteen by the town council of Oxford, and fourteen by the ratepayers of the parishes situated within the area formerly within the jurisdiction of the commissioners for amending certain mileways leading to Oxford and making improvements in the university and city of Oxford the suburbs thereof and the adjoining parish of Saint Clement, and of the members for any parishes or parts of parishes which may have been or may hereafter be added to the Oxford district.

After the passing of this Act, a district formed out of the rural sanitary districts of the city of Oxford, and the Abingdon union, to be termed the "Grandpont district," shall be defined by an order of the Local Government Board, and on a day to be mentioned in such order, the said district shall form part of the said local government district of Oxford. The election of members of the said local board by the town council and by the ratepayers of the parishes and parts of parishes respectively shall be conducted at the same time, in the same way, and subject to the same regulations in and subject to which such election is conducted at the time of the passing of this Act.

As regards the district of Cowley now comprised in the said local government district of Oxford, and the district of Grandpont when added to the same district, the chairman of the said local board or, in his absence, the clerk to the local board, shall summon



a meeting of the several persons rated to the relief of the poor in respect of hereditaments situated in the said Cowley and Grandpont districts respectively, by public notices under his hand, to be affixed three clear days previously to the principal doors of every church and chapel in the districts, such meeting to be held on the day when the members for the parishes are elected, and at a place in each such district to be fixed by the chairman or clerk, and the appointment of a chairman and all other the business of such meetings shall be conducted as if the meetings respectively were the meetings of a vestry in a parish.

An election of the member for the Grandpont district shall take place as soon as convenient after that district has been added to the Oxford local government district as aforesaid, and he shall continue in office until the next annual election of the said local board.

The fifteen members to be elected by the university shall be elected as follows ; namely, four members shall be elected by the university in convocation, and eleven members shall be elected by the heads and senior resident bursars of the several colleges entitled by any statute of the university or otherwise to matriculate students, and by the heads of the several halls ; any member of the university, being of the degree of Master of Arts, Bachelor of Civil Law, or Bachelor in Medicine, or any superior degree of the university, shall be qualified to be elected ; and the elections shall be conducted by the said university, and by the colleges and halls respectively, at the same time, and in the same way, and subject to the same regulations, in and subject to which guardians of the poor for the university and for the colleges and halls are now or may hereafter be chosen by them respectively, save that in the election of members the heads and bursars of all the colleges and the heads of all the halls shall be summoned by the vice-chancellor for that purpose, and shall be entitled to vote.

Except as above provided, nothing in this Act shall affect the provisions of any order confirmed by Parliament relating to the local government district of Oxford, and in force at the time of the passing of this Act.

#### REPEAL OF ACTS.

CCCXLIII. The Acts specified in the first and second parts of Schedule V. to this Act are hereby repealed to the extent in the

Repeal of  
Acts in  
sched. V.

third column in the said parts of that schedule mentioned, with the following qualification ; (that is to say,)

That so much of the said Acts as is set forth in the third part of that schedule shall be re-enacted in manner therein appearing, and shall be in force as if enacted in the body of this Act.

Provided also, that this repeal shall not affect—

- (a.) Anything duly done or suffered under any enactment hereby repealed ; or
- (b.) Any right or liability acquired accrued or incurred under any enactment hereby repealed ; or
- (c.) Any security given under any enactment hereby repealed ; or
- (d.) Any penalty forfeiture or punishment incurred in respect of any offence committed against any enactment hereby repealed ; or
- (e.) Any investigation legal proceeding or remedy in respect of any such right liability security penalty forfeiture or punishment as aforesaid ; and any such investigation legal proceeding and remedy may be carried on as if this Act had not been passed.

As to the provisions re-enacted, see page 25.

## SCHEDULES.

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### SCHEDULE I.

#### RULES AS TO MEETINGS AND PROCEEDINGS

##### (1.) *Rules applicable to Local Boards.*

I. Every local board shall from time to time make regulations with respect to the summoning notice place management and adjournment of their meetings, and generally with respect to the transaction and management of their business under this Act. P.H., s. 34,  
P.H. 1874,  
s. 27.

These regulations do not require confirmation like byelaws. See section 188.

II. No business shall be transacted at any such meeting unless at least one-third of the full number of members be present thereat, subject to this qualification, that in no case shall a larger quorum than seven members be required.

The provision that a larger quorum than seven shall not be required is new.

III. Every local board shall from time to time at their annual meeting appoint one of their number to be chairman for one year at all meetings at which he is present.

As to the annual meeting see section 199, and rule 11 of this Schedule.

IV. If the chairman so appointed dies resigns or becomes incapable of acting another member shall be appointed to be chairman for the period during which the person so dying resigning or becoming incapable would have been entitled to continue in office, and no longer.

V. If the chairman is absent from any meeting at the time appointed for holding the same, the members present shall appoint one of their number to act as chairman thereat.

VI. The names of the members present, as well as of those voting on each question, shall be recorded, so as to show whether each vote given was for or against the question.

The Public Health Act 1848 merely required the names of those voting to be recorded.

VII. Every question at a meeting shall be decided by a majority of votes of the members present, and voting on that question.

The addition of the words "and voting on that question" obviates the difficulty raised in *Ex-parte Eynsham*, 13 Jur. 345, and other cases.

VIII. In case of an equal division of votes the chairman shall have a second or casting vote.

P.H., s. 29,  
and see s.  
19.

IX. The proceedings of a local board shall not be invalidated by any vacancy or vacancies among their members, or by any defect in the election of such board, or in the election or selection or qualification of any members thereof.

The word "selection" only applies to certain local boards constituted under the Public Health Act 1848; see section 339, and rule 71 of schedule II.

X. Any minute made of proceedings at a meeting, and copies of any orders made or resolutions passed at a meeting, if purporting to be signed by the chairman of the meeting at which such proceedings took place or such orders were made or resolutions passed, or by the chairman of the next ensuing meeting, shall be received as evidence in all legal proceedings; and, until the contrary is proved, every meeting where minutes of the proceedings have been so made shall be deemed to have been duly convened and held, and all the proceedings thereat to have been duly had.

This provision is new.

L.G., s. 24  
(8).

XI. The annual meeting of a local board shall be held as soon as may be convenient after the fifteenth of April in each year.

By rule 55 of schedule II. the election of new members must be completed by the 15th of April and on that day the newly elected members come into office.

A chairman for the ensuing year must be appointed at the annual meeting. See rule III.

As to the first meeting of a new local board see the next rule.

XII. The first meeting of a local board for a district constituted after the passing of this Act shall be held at such place and on such day (not being more than ten days after the completion of the election) as the returning officer may by written notice to each member of the board appoint; and the members shall appoint one of their number to be chairman at such meeting, and shall also appoint one of their number to be chairman for one year at all meetings at which he is present.

As to constitution of new local government districts see sections 271 and 272.

XIII. Nothing in these rules contained with respect to the appointment of chairman shall apply to the Oxford district, and in that district a chairman shall be appointed as heretofore.

See section 342.



(2.) *Rules applicable to Committees of Local Authorities, other than Councils of Boroughs, and to Joint Boards.*

As to the appointment, etc., of committees see sections 200-4, and as to committees of councils of boroughs see section 198 and note.

As to joint boards sections 280-2.

I. A committee or joint board may meet and adjourn as it thinks proper.

II. The quorum of a committee or joint board shall consist of such number of members as may be prescribed by the authority that appointed the committee or joint board, or, if no number is prescribed, of three members.

III. A committee or joint board may appoint a chairman of its meetings.

IV. If no chairman is elected, or if the chairman elected is not present at the time appointed for holding any meeting, the members present shall choose one of their number to be chairman of such meeting.

V. Every question at a meeting shall be determined by a majority of votes of the members present and voting on that question.

VI. In case of an equal division of votes the chairman shall have a second or casting vote.

VII. The proceedings of a committee or joint board shall not be invalidated by reason of any vacancy or vacancies amongst their members, or any defect in the mode of appointment of such committee or joint board or of any member thereof.

VIII. Any minute made of proceedings at a meeting, and copies of any orders made or resolutions passed at a meeting, purporting to be signed by the chairman of the meeting at which such proceedings took place or such orders were made or resolutions passed, or by the chairman of the next ensuing meeting, shall be received as evidence in all legal proceedings; and, until the contrary is proved, every meeting where minutes of the proceedings have been so made shall be deemed to have been duly convened and held, and all the proceedings thereat to have been duly had.

These rules will operate subject to any regulations for the guidance of a committee made by the authority which appointed it. Sec s. 204.

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## SCHEDULE II.

## (1.) RULES FOR ELECTION OF LOCAL BOARDS.

*Number and Qualification of Members.*

P.H. 1874, I. The number of members of a local board constituted after the  
s. 28. passing of this Act shall be such number as is determined by the order forming the district.

The Act makes no alteration in the number of members of local boards existing at the time of the passing of the Act (see section 326), though under the next rule the Local Government Board have power to alter the number after local inquiry.

With regard however to new districts, the number of members will be fixed by the Local Government Board. Under the former law the number was fixed by the owners and ratepayers.

II. The Local Government Board may from time to time by order, after local inquiry, increase or diminish the number of members of any local board, and may prescribe at what time or times and in what manner such increase or diminution shall take effect, and may vary temporarily the provisions of this schedule relating to the continuance in office and retirement of members so far as may be necessary for that purpose.

The latter part of this rule is new.

L.G., s. 24 III. A person shall not be qualified to be a member of a local board  
(3). unless he is at the time of his election, and so long as he continues in office by virtue of such election, resident within the district for which or for part of which he is elected, or within seven miles thereof, and is seised or possessed of real or personal estate, or both, to the value of not less than five hundred pounds in districts containing less than twenty thousand inhabitants, or to the value of not less than one thousand pounds in districts containing twenty thousand or more inhabitants; or is rated to the relief of the poor of such district, or of some parish within the same, on an annual value of not less than fifteen pounds in districts containing less than twenty thousand inhabitants, or on an annual value of not less than thirty pounds in districts containing twenty thousand or more inhabitants.

The seven miles will be measured "as the crow flies." *Lake v. Butler*, 1 Jur. (N. S.) 499; 24 L. J., Q. B. 273; 5. E. and B. 92; and in ordinary cases on the map. *Mouflet v. Cole*, L. R. 8 Ex. 32.

The number of inhabitants at the time of the election is the criterion, not the number at the last census.

IV. Where two or more persons are jointly seised or possessed of real or personal estate, or both, of such value or amount as would, if equally divided between them, qualify each to be elected, or if two or more persons are jointly rated in respect of any property which if equally divided

between them would qualify each to be elected, each of the persons so jointly seised possessed or rated may be elected, but the same property shall not at the same time qualify the owner and the occupier thereof.

V. A person who is a bankrupt or whose affairs are under liquidation P.H., s. 19, by arrangement or who has entered into any composition with his creditors, shall be incapable, so long as any proceedings in relation to such bankruptcy liquidation or composition are pending, of being elected member of a local board.

#### *Wards.*

VI. The Local Government Board may, by order made on application L.G., s. 24 (4). in pursuance of a resolution of owners and ratepayers passed in manner P.H. 1874, provided by schedule III. to this Act, and after local inquiry, divide any s. 25, district into wards; and on the like application from time to time may abelish such wards, or alter the number or boundaries of such wards, and may determine and from time to time alter the proportion of members of the local board to be elected by each ward.

Provided that where a district has been divided into wards by a provisional order, such wards shall not be abolished or altered otherwise than by a provisional order confirmed by Parliament.

The power to abolish wards is new.

VII. If any member is elected in more than one ward, he shall within three days' notice thereof choose, or, in default of his choosing, the local board at their next meeting shall decide for which one of the wards the member shall serve, and he shall thereupon be held to be elected in that ward only, and a vacancy shall be held to exist in the other ward or wards, and shall be filled up as if it were a casual vacancy.

As to casual vacancies see rule 65.

VIII. No person entitled to vote shall give in the whole of the wards a greater number of votes than he would have been entitled to give if the district had not been divided into wards, nor in any one ward a greater number of votes than he is entitled to in respect of property in that ward.

IX. Subject as aforesaid, any owner or ratepayer may, by notice in writing delivered to the clerk of the local board, or in case of the first election to the returning officer, elect in what ward or wards he will vote for the ensuing year, and determine the proportion of votes which he will give in any one or more of such wards, and if he does not give such notice he shall not be entitled to vote for any ward in which he does not reside.

This notice should be given before the first day appointed for delivery of the voting papers; see rule 36.

As to the returning officer, see rules 32-35.

*Qualification of Electors, Scale of Voting, and Register of Owners.*

P.H., s. 20. X. The word "owner," when used in relation to the right of voting at any election of a local board, shall mean any person for the time being in the actual occupation of any kind of property in the district or part of a district for which he claims to vote, rateable to the relief of the poor, and not let to him at a rackrent, or any person receiving on his own account, or as mortgagee or other incumbrancer in possession, the rackrent of any such property.

This definition of "owner" applies only for the purpose of voting at local board elections and differs from the general definition in section 4.

XI. A person shall not be deemed a ratepayer or be entitled to vote as such at any such election unless he has been rated to the relief of the poor in the district or part of a district for which he claims to vote for the space of one whole year immediately preceding the day of tendering his vote, and has also before that day paid all rates made on him for the relief of the poor in such district or part of a district for the period of one whole year, and all rates due from him under this Act, except rates which have been made or become due within the six months immediately preceding.

This rule does not seem to preclude the occupier from voting where the owner is rated instead of the occupier under 32 & 33 Vict. c. 41.

Ibid. XII. Owners of and ratepayers in respect of property situated within the district for which the election is held shall be entitled to vote according to the scale following; (that is to say,)

If the property in respect of which the person is entitled to vote is rated to the poor rate on a rateable value of less than fifty pounds, he shall have one vote; if such rateable value amounts to fifty pounds and is less than one hundred pounds, he shall have two votes; if it amounts to one hundred pounds and is less than one hundred and fifty pounds, he shall have three votes; if it amounts to one hundred and fifty pounds and is less than two hundred pounds, he shall have four votes; if it amounts to two hundred pounds and is less than two hundred and fifty pounds, he shall have five votes; and if it amounts to or exceeds two hundred and fifty pounds, he shall have six votes.

The scale is the same as that established by 7 & 8 Vict. c. 101 for the election of guardians.

XIII. Any person who is owner and also *bonâ fide* occupier of the same property shall be entitled to vote both in respect of such ownership and of such occupation.

XIV. Owners may give their votes either personally or by proxy.

The power for individual owners to vote by proxy is new, though its existence seems in some instances to have been assumed under the Local Government Acts.



XV. The instrument appointing a proxy shall be in writing under the hand of the appointor, or where the appointor is a corporation under their common seal, or where the appointor is a body of persons unincorporate under the hands of three directors or other persons having the direction or management of the undertaking or business carried on by such body of persons; and every such instrument shall be attested by a witness, and may be in the form M. in schedule IV. to this Act.

XVI. No member of a corporation or of any such body of persons (other than a partnership firm consisting of not more than six persons) shall be entitled to vote individually as owner in respect of property belonging to such corporation or body of persons.

See p. 22.

XVII. Partners in a firm consisting of not more than six persons may vote as owners in respect of property of the firm as if that property were equally divided among the partners.

XVIII. An owner or a proxy shall not (except at the first election of a local board constituted after the passing of this Act) be entitled to have a voting paper delivered to him as such unless his name is on the register herein-after mentioned.

See p. 22.

XIX. The local board shall cause a register to be made and kept, in which shall be entered the names addresses and qualifications of the owners claiming and entitled to vote, and the names or descriptions addresses and qualifications of the appointors of proxies, and the names and addresses of proxies duly appointed. P.H. 1874, s. 23.

Any such register made before the passing of this Act shall be deemed to be a register or part of a register under this Act.

XX. A claim by an owner or proxy to be entered on the register shall state his name and address within the district, and a description of the nature of the interest or estate in the property giving the qualification, and a statement of the amount of all rent service (if any) received or paid in respect thereof by him or the body of persons for whom he is proxy, and of the persons from whom or to whom the same is received or paid; and in the case of a proxy the claim shall be accompanied by the appointment of the proxy or an attested copy thereof.

XXI. A claim by an owner or proxy may be made by writing in the form L. in schedule IV. to this Act.

XXII. A person entitled to vote either as owner or ratepayer may

object to the keeping of any name on the register by writing in the form L. in the said schedule.

XXIII. Claims and objections shall be sent to the chairman of the local board on some one of the first six days of March, and a claim or objection sent at any other time shall not be admitted by the chairman.

XXIV. A person making an objection shall also give written notice thereof to the person objected to by leaving the same at the address within the district of that person.

That is, at the registered address.

XXV. The chairman shall, between the twentieth of February and the first day of March, publish a notice, in the form L. in schedule IV. to this Act, and signed by him, of the time within which claims and objections are to be made as aforesaid, and shall cause a copy of such notice to be inserted in some local newspaper circulating in the district and to be affixed at the places where parochial notices are usually affixed (*a*).

Notwithstanding the terms of this rule, an exact adherence to the form in the schedule does not appear to be necessary. See section 317.

XXVI. The chairman on the expiration of the time for sending in claims and objections shall with the assistance of such persons (if any) as the local board may appoint, proceed forthwith to revise the register by entering thereon the names of the persons who have claimed and are proved to his satisfaction to be entitled to vote as owners or proxies respectively, and the other particulars by this schedule required to be

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(*a*) The annexed Table shows all the dates for the purposes of a local board election:—

#### TABLE OF DATES.

- 20th February—1st March.—Notice by returning officer of time for sending in claims and objections (rule 25).  
 1st—6th March.—Sending in claims and objections (rule 33).  
 7th March.—First possible day for closing revision of register (rule 26).  
 „ „ —First possible day for publication of notice of particulars mentioned in rule 36 by returning officer (rule 36).  
 16th March.—Last possible day for closing revision of register (rule 28).  
 20th March.—Last possible day for publication of notice of particulars mentioned in rule 36 by returning officer (rule 36, but see note there).  
 21st March.—First possible day for conclusion of delivery to returning officer of nomination papers (see rule 36).  
 22nd March.—First possible day for delivery to voters of voting papers (see rule 36).  
 25th March.—First possible day for collection of voting papers (see rules 36 and 44).  
 3rd April.—Last possible day for delivery to returning officer of nomination papers (see rules 36 and 44).  
 4th April.—Last possible day for delivery to voters of voting papers (rule 44).  
 7th April.—Last possible day for collection of voting papers (rule 48).  
 15th April.—New members come into office (rule 55).

For the provision where the day appointed for the performance of any act in relation to an election falls on a Sunday, etc., see rule 66.

entered with respect to owners and proxies, and by expunging from the register the names of owners and proxies who are proved to his satisfaction to be dead, or to have ceased to be entitled to vote.

See rule XIX.

XXVII. For the purpose of enabling the chairman to determine the validity of claims and objections he may examine such persons and call for such evidence from the persons making the same as he may think fit; any person may tender himself to be examined; but no person shall be entitled to be examined or to be heard before the chairman in support either of a claim or an objection.

XXVIII. Not later than the sixteenth of March the chairman shall close the revision and sign the revised register, and that register shall continue in force for the twelve months next ensuing.

In the absence of fraud it would seem that the chairman's decision on all questions connected with the register is final.

XXIX. If the chairman is unable or unwilling to conduct the revision of the register, the local board shall appoint some person to conduct the revision, and in default of such appointment the revision shall be conducted by the clerk to the local board. Any person so appointed or the clerk shall for the purposes of the revision have the same powers and duties as the chairman of the local board.

XXX. The register shall be open to the inspection of candidates and other persons interested in any election or in any question at which any such owner or proxy claims to vote, subject to such rules as the local board may prescribe for the prevention of loss injury or disorder.

XXXI. At the first election of a local board constituted after the passing of this Act an owner or proxy shall be entitled to have a voting paper delivered to him if not less than fourteen days before the last day appointed for delivery of the voting papers he sends a claim in writing to the returning officer containing such particulars as are herein-before required to be contained in claims to be entered on the register of owners and proxies.

A provision to this effect is necessary as there cannot be any register in force at a first election.

#### *Returning Officer.*

XXXII. The returning officer, for the purposes of the election of a local board, shall be the chairman of the board, or in the case of the first election, if the district is constituted by provisional order, such person as may be appointed by order of the Local Government Board; and if the district is constituted in pursuance of a resolution of owners and ratepayers, the summoning officer of the meeting of owners and ratepayers; and all powers and duties by this Act vested in or imposed on the re-

P.H., s. 21

turning officer, and all other duties requisite to be performed by him in relation to such election, shall be exercised and performed by the chairman or such person as aforesaid.

For the constitution of new local government districts see sections 271-274.

XXXIII. If the office of chairman is vacant at the time when any such power or duty must be exercised or performed, or if the chairman or such other person as aforesaid, from illness or other sufficient cause, is unable to exercise or perform such powers or duties, or is absent, or refuses to act, some other person shall be appointed (in case of the first election) by the Local Government Board, and (in any other case) by the local board, to exercise or perform such powers and duties.

The chairman if his term of office is about to expire may seek re-election, but in that event some other person should be at once appointed to perform the duties of returning officer.

XXXIV. The local board, or (in case of the first election) the returning officer, shall, before or during the election, appoint a competent number of persons to assist the returning officer in conducting and completing the same.

As to the remuneration of the returning officer and his assistants, see rule 67.

XXXV. If any returning officer appointed by the Local Government Board dies refuses or becomes incapable to act, the Local Government Board may appoint another person to act in his stead.

#### *Election.*

P.H., s. 23. XXXVI. The returning officer shall after the close of the revision of the register but not less than fourteen days before the last day appointed for delivery to him of nomination papers, publish a notice, signed by him, and specifying—

The number and qualification of the persons to be elected ;

The place where the nomination papers herein-after mentioned are to be delivered or sent to him ;

The last day on which they are to be delivered or sent in ;

The mode of voting in case of a contest ;

The day or days on which the voting papers will be delivered and the day on which they will be collected ; and

The place for the examination and for the casting up of the votes ; and shall also cause copies of such notice to be affixed at the places where parochial notices are usually affixed.

The last possible day for collection of the voting papers is April 7th (rule 48) ; the last possible day therefore for delivery of voting papers is April 4th (rule 44, and see the table at p. 228) : the last day for delivery of nomination papers to the returning officer must consequently in practice be not later (and should be earlier) than the 1st or 2nd of April in order to give time for printing of the voting papers. Hence the notice required by this rule to be published fourteen days before the last day for delivery of nomi-



nation papers will have to be published not later than the 17th of March though technically it need not be published before the 20th of March. It will probably be advisable to publish it as soon as possible after the revision of the register is closed; and to complete that revision as speedily as is compatible with the due examination of claims and objections. The revision cannot however be begun before the 7th of March (rules 23, 26).

XXXVII. The returning officer may, if he thinks fit, cause to be made an alphabetical list of the persons entitled to vote at the election.

The poor rate books will supply the names of the ratepayers, and the owners and proxies may be inserted on the list as the revision of the register proceeds.

XXXVIII. The clerk of the board of guardians of any union, and the overseers or other officers of every parish wholly or in part within the parts for which the election is held, and having the custody of any books or papers relating to the election of guardians of the poor, or of the poor rate books relating to any such parish, shall permit the same to be inspected and copies or extracts to be taken therefrom by the returning officer. Any person having the custody of any such books or papers who refuses to permit the same to be inspected, or copies or extracts to be taken therefrom, shall be liable to a penalty not exceeding five pounds. P.H., s. 22.

The penalty is new. As to its recovery and application, see Part VII. Legal Proceedings.

XXXIX. Any person entitled to vote may nominate for the office of member of the local board himself (if qualified to be elected), or any other person or persons so qualified (not exceeding the number of persons to be elected).

XL. Every such nomination shall be in writing, and shall state the names and residence and calling or quality of the person or persons nominated, and shall be signed by the person nominating, and be delivered or sent to the returning officer.

No particular form of nomination paper is necessary, but the following form may be adopted:—

I the undersigned *A. B.* being entitled to vote at the ensuing election of members of the local board of \_\_\_\_\_ do hereby nominate for the office of member of the said local board the following persons:

Surname.	Other Names.	Residence.	Calling or Quality.
Brown . .	William . .	53 New Street, Bradford	Merchant
Smith . .	Sydney James .	Orchardsleigh, Somerset	Esquire
Robinson . .	Henry George .	The Elms, Bradford .	Solicitor

\_\_\_\_\_  
Signature of Nominator.

Dated this       day of       18 .

The form need not state the qualification of the nominator. *R. v. Morgan*, L. R. 7 Q. B. 25.

XLI. Any person nominated may withdraw from his candidature by giving notice to that effect, signed by him, to the returning officer.

XLII. If the number of persons nominated and not withdrawn is the same as or less than the number of persons to be elected, such persons (if duly qualified) shall be deemed and shall be certified by the returning officer under his hand to be elected.

This certificate will be deposited in the office of the local board, and the returning officer must send notice to each elected candidate of his election. See rule 52.

XLIII. If the number nominated and not withdrawn exceeds the number to be elected, the returning officer shall cause voting papers, in the form N. contained in schedule IV. to this Act, to be prepared and filled up, and shall insert therein the names and residence and the calling or quality of each of the persons nominated and not withdrawn, in the alphabetical order of the surnames of such persons, but it shall not be necessary to insert more than once the name of any person nominated.

It is the duty of the returning officer to fill up the column with the number of votes, but his omission to do so does not vitiate the election. *R. v. Loftthouse*, L. R. 1 Q. B. 433; 12 Jur. (N. S.) 619; 14 L. T. (N. S.) 359; *diss.* Shee J.

See note to rule 25.

XLIV. The returning officer shall, three days at least before the day of collection of the voting papers, cause one of such voting papers to be delivered, by persons appointed by him for that purpose, at the address stated in the register or claim of each owner and proxy, and at the residence within the district of each ratepayer entitled to vote therein.

The day of collection must be not later than the 7th of April (rule 48).

P.H., s. 25. XLV. Each voter shall write his initials in the voting paper delivered to him against the name or names of the person or persons (not exceeding the number of persons to be elected) for whom he intends to vote, and shall sign such voting paper.

The decisions on similar provisions of the Municipal Corporations Act show that a voting paper not signed is bad: *R. v. Tart*, 5 Jur. (N. S.) 679; 28 L. J., Q. B. 173; but that initials for the Christian name or names are sufficient: *R. v. Avery*, 17 Jur. 272; 21 L. J., Q. B. 429.

The directions on the voting paper (Form N) which require the name and address to be subscribed at full length are not (it is conceived) imperative, so that failure to comply strictly with them would not invalidate a voting paper.

XLVI. Any person voting as a proxy shall in like manner write his own initials and sign his own name, and state also in writing the name of the person or body of persons for whom he is proxy.

XLVII. Any voter unable to write shall affix his mark at the foot of

the voting paper in the presence of a witness, who shall attest and write the name of the voter against the mark, as well as the initials of such voter against the name of every candidate for whom the voter intends to vote.

XLVIII. The returning officer shall cause the voting papers to be collected on the day of collection (which shall not be later than the seventh of April) by such persons as he may appoint.

XLIX. No voting paper shall be received or admitted unless the same has been delivered at the address or residence as aforesaid of the voter, nor unless the same is collected by the persons appointed for that purpose: Provided—

(a.) That if any person entitled to receive a voting paper has not received a voting paper as aforesaid, he shall, on personal application before the day of collection to the returning officer, be entitled to receive a voting paper from him, and to fill up the same in his presence, and then and there to deliver the same to him:

(b.) That if any voting paper duly delivered has not been collected, through the default of the returning officer or the persons appointed to collect the same, the voter in person may deliver the same to the returning officer before twelve o'clock at noon on the day or on the first day (as the case may be) appointed for the examination and casting up of the votes.

L. If any person nominated, or any person on his behalf, gives at least one clear day's notice in writing to the returning officer, before the delivery or collection of the voting papers, of an intention to send some agent to accompany the deliverer or collector of the papers, the returning officer shall make his arrangements so as to enable the person appointed by him to be so accompanied, but no such agent shall interfere in any respect in the delivery or collection of the voting papers. L.G., s. 24 (6).

See rule 69 for penalty on such interference.

#### *Counting of Votes.*

LI. The returning officer shall on the day immediately following the day of collection of the voting papers, and on as many days immediately succeeding as may be necessary, attend at the place appointed for the examination and casting up of the votes, and ascertain the validity of the votes, by an examination of the rate books and such other books and documents as he may think necessary, and by examining such persons as he may see fit; he shall cast up such of the votes as he finds to be P.H., s. 27.

valid, and to have been duly given collected or received, and shall ascertain the number of such votes for each candidate.

Any candidate may himself attend or may appoint any agent to attend the examination and casting up of the votes; any candidate or agent so attending who obstructs or in any way interferes with the examination and casting up of the votes may, by order of the returning officer, be forthwith removed from the place appointed for that purpose, and if so removed shall not be permitted to return.

The chairman or his duly appointed deputy must personally attend and examine the votes, and if he fails to do so the election is void. *R. v. Buckhouse*, L. R. 2 Q. B. 16.

This provision enabling a candidate or his agent to attend the counting of the votes is new and follows the precedent of the Ballot Act 1872.

LII. The candidates to the number to be elected who, being duly qualified, have obtained the greatest number of votes, shall be deemed and shall be certified by the returning officer under his hand to be elected, and to each person so elected the returning officer shall forthwith send or deliver notice of his election.

The court will not allow an information in the nature of a *quo warranto* to be filed to try the title to an office merely because there has been an irregularity in the election, in the absence of bad faith and where the result has not been affected. *R. v. Ward*, L. R. 8 Q. B. 210.

LIII. The returning officer shall also cause to be made a list containing the names of the candidates, together with (in case of a contest) the number of votes given for each, and the names of the persons elected, and shall sign and certify such list, and shall deliver the same, together with the nomination and voting papers which he has received, to the local board at their first or next meeting (as the case may be), who shall cause the same to be deposited in their office.

LIV. Such list shall during office hours be open to public inspection, together with all other documents relating to the election, for six months after the election, without fee or reward; and the returning officer shall, as soon as may be after the completion of the election, cause such list to be printed, and copies thereof to be affixed at the usual places for affixing parochial notices within the parts for which the election has taken place.

LV. The returning officer shall make his arrangements for the conduct of the election so as to ensure its completion, and the ascertainment of the result, on or before the fifteenth of April in each year; and on that day the candidates elected shall come into office, and until that day the members in whose room they are elected shall continue to hold office.

Provided that the first election of a local board for a district constituted after the passing of this Act may be held at any time mentioned in the order constituting the district, and the members shall come into office on the day appointed for their first meeting, but shall for the purposes of



retirement be deemed to have come into office on the fifteenth of April next following the commencement of the order.

This rule provides that henceforth members of local boards shall come into office on the same day as elective members of boards of guardians.

The time and place for the first meeting of a new local board will be appointed by the returning officer, but it must be held not more than ten days after the completion of the election. See schedule I., rule 12.

*Declaration to be made by Members.*

LVI. A person shall not act as a member of a local board (except in P.H., s. 17. administering the following declaration) until he has made and signed before two or more other members of such board a declaration in writing to the effect following; (that is to say,)

‘ I *A.B.* do solemnly declare, that I am seised or possessed of real or personal [*or* real and personal] estate to the value or amount of  
‘ [*or* that I am rated to the relief of the poor of                      on the annual  
‘ value of                      .]

‘ (Signed)                      *A.B.*

‘ Made before us, *C.D.* and *E.F.*, members of the

‘ Local Board for the District of

‘ this                      day of                      .’

LVII. Such declaration shall be signed by the person making the same, and shall be filed and kept by the clerk of the local board; and any person who falsely or corruptly makes and subscribes such declaration, knowing the same to be untrue in any material particular, shall be deemed guilty of a misdemeanour.

LVIII. Any person who neglects to make and subscribe the declaration required by this Act for the space of three months next after he has become a member of the local board shall be deemed to have refused to act, and shall cease to be a member of such local board, and his office as such shall thereupon become vacant.

A casual vacancy will thus be occasioned, which may be filled up by the local board. See rule 65.

*Retirement of Members.*

LIX. Subject as herein-after mentioned, one-third of the number of P.H., ss. 13, 14.  
members elected for the district, or if the district is divided into wards,  
one-third of the number elected for each ward (being those who have been longest in office), shall go out of office on the fifteenth of April in each year.

As to wards, see rules 6-9.

As to members of local boards existing at the passing of the Act, rule 73.

LX. The order in which the persons elected at the first election of a local board for a district constituted after the passing of this Act shall go out of office shall be regulated by the local board, and if the number of persons to be elected is not divisible by three, the proportion to go out of office in each year shall be regulated by the local board so that as nearly as may be one-third shall go out of office in each year.

As the Local Government Board are to fix the number of members in future, it may be presumed that the number will be invariably divisible by three. *Howitt v. Manfull*, 2 Jur. (N.S.) 883; 25 L. J., Q. B. 411; 6 E. and B. 736.

LXI. No person elected shall in any case continuously remain in office (without re-election) for more than three years: Provided that if the number of persons to be elected for any ward is less than three, the persons elected shall go out of office on the fifteenth of April in such year or years as the local board may, with the sanction of the Local Government Board, determine.

P.H., ss.  
18, 19.  
L.G., s. 25.

LXII. Before the fifteenth of April in each year a number of persons equal to the number of retiring members shall be elected in manner provided by this schedule, and so many others as may be necessary to complete the full number of the local board in respect of which the election is held.

There may be casual vacancies requiring to be filled up. See rule 65.

LXIII. Any person who has ceased to be a member is re-eligible (if qualified).

#### *Disqualification of Members.*

P.H., s. 19.  
L.G., s. 25.

LXIV. Any member who ceases to hold his qualification, or becomes bankrupt, or submits his affairs to liquidation by arrangement, or compounds with his creditors, or is absent from meetings of the local board for more than six months consecutively (unless in case of illness), or accepts or holds any office or place of profit under the local board of which he is member, or in any manner is concerned in any bargain or contract entered into by such board, or participates in the profit thereof, or of any work done under the authority of this Act in or for the district, shall, except in the cases next herein-after provided, cease to be such member, and his office as such shall thereupon become vacant:

Provided that no member shall vacate his office—

By reason of his being interested in the sale or lease of any lands or in any loan of money to the local board; or

By reason of his being interested in any contract with the local board as a shareholder in any joint stock company, but he shall

not vote at any meeting of the local board on any question in which such company are interested, save that in the case of a water company, or other company established for the carrying on of works of a like public nature, this prohibition may be dispensed with by the Local Government Board.

As to interest in contract, *Woolley v. Kay*, 1 H. and N. 307, 25 L. J., Ex. 351; *Lefevre v. Lankester*, 1 Jur. (N. S.) 499; 24 L. J., Q. B. 273; 5 E. and B. 92; *Wednesbury v. Stevenson*, 27 J. P. 741; *Nicholson v. Fields*, 31 L. J., Ex. 233; 7 H. and N. 210, and the note at p. 36 of Rawlinson's Municipal Corporation Act (6th ed.).

#### *Casual Vacancies.*

LXV. Any casual vacancy occurring by death resignation disqualification failure duly to elect members or otherwise in a local board shall be filled up by the local board out of qualified persons within six weeks or within such further period as the Local Government Board may by order allow; but the member so chosen shall retain his office so long only as the vacating member would have retained the same if no vacancy had occurred.

L.G., s. 24  
(7).

In the event of a casual vacancy, or of an ordinary vacancy which ought to have been filled up at a previous election, being filled up at an annual election, if there is a poll, the member who has been elected by the fewest votes shall be deemed elected to fill such vacancy; if there is no poll, the member to be deemed to be elected to fill such vacancy shall be determined by lot.

The last paragraph is new, as is the power to extend the time for filling up casual vacancies.

#### *General Provisions.*

LXVI. Whenever the day appointed for the performance of any act in relation to any election is a Sunday Christmas Day or Good Friday a Bank holiday or any day appointed for public fast or thanksgiving, such act shall be performed on the day next following, unless it is one of the days excluded as aforesaid; and in that case on the day following such excluded day.

P.H., s. 23.

LXVII. The necessary expenses attendant on any election, and such reasonable remuneration to the returning officer and other persons for services performed or expenses incurred by them in relation thereto as may be allowed by the local board, shall be paid out of the general district rates levied under this Act.

The local board have a discretion as to what is reasonable remuneration. *Ex parte Metcalfe*, 2 Jur. (N. S.) 1245; 6 E. and B. 288.

LXVIII. If the returning officer refuses or neglects to comply with any of the provisions of this schedule relating to elections, he shall be

P.H., s. 30.

liable to a penalty not exceeding fifty pounds; and any person employed for the purposes of any such election by or under the returning officer who is guilty of any such neglect or refusal shall be liable to a penalty not exceeding five pounds.

L.G., s. 13  
(5).

LXIX. Any person who—

Fabricates in whole or in part or alters defaces destroys abstracts or purloins any voting paper, or

Personates any person entitled to vote at any election, or

Falsely assumes to act in the name or on the behalf of any person so entitled to vote, or

Interferes with the delivery or collection of any voting papers, or

Delivers any voting paper under a false pretence of being lawfully authorised so to do,

shall be liable to a penalty not exceeding twenty pounds, or, in the discretion of the court, to imprisonment with or without hard labour for any period not exceeding three months.

To constitute the offence of fabricating etc. under this enactment, there must be a guilty intention. *Aberdare Local Board v. Hammett*, L. R. 10 Q. B. 162; 39 J. P. 69.

As to recovery and application of penalties, see Part VII. Legal Proceedings.

P.H., s. 19.

LXX. Any person who, not being duly qualified to act as member of the local board, or not having made and subscribed the declaration required of him by this Act, or being disabled from acting by any provision of this Act, acts as such member, shall be liable to a penalty of fifty pounds, which may be recovered by any person, with full costs of suit, by action of debt; in such action it shall be sufficient for the plaintiff to prove in the first instance that the defendant at the time when the offence is alleged to have been committed acted as such member; and the burden of proving qualification, and the making and subscription of the declaration, or of negating disqualification by reason of non-residence or not being seised or possessed of the requisite real or personal estate, or both, shall be on the defendant.

But all acts and proceedings of any person disqualified disabled or not duly qualified, or who has not made and subscribed the declaration required by this Act, shall, if done previously to the recovery of the penalty mentioned in this Act, be valid and effectual to all intents and purposes.

The consent of the Attorney General is by section 253 made requisite to enable a person not otherwise aggrieved than as one of the general public to sue for a penalty under this rule. See *Boyce v. Higgins*, 18 Jur. 333; 2 W. R. 73; *Hollis v. Marshall*, 27 L. J., Ex. 236; 2 H. & N. 755.



*As to Local Boards established before the passing of the Local Government Act, 1858.*

LXXI. Where the district of a local board established under the Public Health Act 1848, before the passing of the Local Government Act 1858, comprises the whole or any part of a borough or boroughs, and also parts not within the boundaries of any such borough, the following provisions shall have effect ; (namely,)

See P.H.,  
s. 12.

- (a.) Each person selected by the council of any such borough out of their own number shall be a member of the local board with which he is selected to act, so long as he continues without re-election to be member of the council from whom he was selected, and no longer ; and a declaration shall not be required to be made by any person so selected :
- (b.) Each person selected by any such council otherwise than out of their own number shall be a member of the local board with which he is selected to act, for one year from the date of his selection, and no longer :
- (c.) In case of any vacancy in the number selected some other qualified person shall be selected by the council by whom the person causing the vacancy was selected, within one month after the occurrence of the vacancy :
- (d.) The meeting of any council at which any selection as aforesaid is made in pursuance of this Act shall to all intents and purposes be deemed to be a meeting held in pursuance of the Act of the session of the fifth and sixth years of the reign of King William the Fourth, intituled “ An Act for the Regulation of Municipal Corporations in England and Wales,” and any Act amending the same :
- (e.) If any person is both selected and elected to be a member of any such local board, he shall, within three days after notice thereof from the clerk, choose, or, in default of such choice, the local board of which he is so selected and elected to be member shall determine, the title in respect of which he shall serve ; and immediately on such choice or determination the person so selected and elected shall be deemed to be member only in respect of the title so chosen or determined, and his office as member in respect of any other title shall thereupon become vacant.

See the saving for these local boards in section 339.

LXXII. Elective members of any local board established under the Public Health Act 1848, before the passing of the Local Government Act 1858, shall be elected by such owners of property and ratepayers and in such manner as in this schedule mentioned ; and the provisions of this

schedule (with the exception of the provisions relating to the number and qualification of members) shall apply accordingly.

*Temporary Provisions.*

LXXIII. All members of local boards existing at the time of the passing of this Act shall, notwithstanding any provision of any Act or order confirmed by Parliament, continue to hold office till the fifteenth day of April one thousand eight hundred and seventy-six; and the next election of members of such local boards shall be held in accordance with the provisions of this schedule.

LXXIV. The provisions of section twenty-six of the Sanitary Law Amendment Act, 1874, shall be deemed not to have been compulsory in the case of the first election of members of any local board elected after the passing of that Act, and before the passing of this Act; and all elections held or purporting to have been held in accordance with such provisions before the passing of this Act, shall be deemed to have been duly held, and to be valid for all purposes.

Some doubts had arisen whether section 26 of 37 & 38 Vict. c. 89, which required elections to be held in March, applied to first elections of local boards.

*Oxford.*

LXXV. Nothing in the rules in this schedule shall apply to the local government district of Oxford.

(II.) PROCEEDINGS IN CASE OF LAPSE OF LOCAL BOARD.

L.G., s. 10. I. Where any local board lapses through its members ceasing to hold office, and failure to elect new members in manner by this Act provided, any mortgagee or other person entitled to any principal or interest on any mortgage of rates made by such local board may, without prejudice to any other mode of recovery, apply for the appointment of a receiver to a court of summary jurisdiction. The said court may, by writing under their hands, appoint a person to make levy and collect the whole or a competent part of the rates liable to the payment of the principal and interest in respect of which the application is made, and to recover all arrears of such rates until such principal and interest, together with the costs of the application and of collection, are paid; and on such appointment being made, all such rates competent part thereof and arrears, shall be paid to the receiver so appointed, and shall be rateably apportioned by him among the mortgagees or other persons entitled to the same.

II. In the case of any lapse of a local board, the owners and ratepayers

of the district may, by resolution passed in manner provided by schedule III. to this Act, determine to elect, and may accordingly proceed to the election of a new local board in manner provided by this schedule, and the result of such election shall be signified to the Local Government Board by the returning officer; and all the powers rights duties property and liabilities of the lapsed board shall attach to the new board as if there had been no lapse before the election thereof, and from the date of the completion of such election all powers of any receiver to make rates under this schedule shall determine.

If no election takes place in pursuance of this provision within three months from the date of the lapse of the board, the Local Government Board may by order dissolve the district, and declare it to be a rural district, or to be included in any adjoining rural district; and from and after a day named in such order all such powers rights duties property and liabilities of the lapsed board as the Local Government Board may direct shall with respect to the dissolved district attach to the rural authority named in the order, and such property shall be held by the rural authority for the benefit of the dissolved district.

The Local Government Board may by order determine any question as to the fact of a local board having lapsed, or as to the date of the lapse of any local board.

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### SCHEDULE III.

#### *Rules as to Resolutions of Owners and Ratepayers.*

(1.) For the purpose of passing a resolution of owners and ratepayers under this Act, a meeting shall be summoned on the requisition of any twenty ratepayers or owners, or of any twenty ratepayers and owners, resident in the district or place with respect to which the resolution is to be passed. L.G., s. 13  
(1).

(2.) The summoning officer of such meeting shall be—

In boroughs, the mayor;

In Improvement Act districts, the chairman of the Improvement Commissioners;

In local government districts, the chairman of the local board;

In places situated in any rural district or districts and having known and defined boundaries, the churchwardens or one of them having jurisdiction co-extensive with the place; or if there are no churchwardens, the overseers or one of them having the like jurisdiction; or if there is none of the officers respectively above enumerated, or if such officer in any case

neglects, is unable, or refuses to perform the duties hereby imposed on him, by any person appointed by the Local Government Board.

Where the boundaries of a place are settled by order of the Local Government Board, the Board shall by such order appoint the summoning officer.

If any summoning officer appointed by the Local Government Board dies, becomes incapable, or refuses or neglects to act, the Local Government Board may appoint another officer in his room.

(3.) Ratepayers or owners making a requisition for the summoning of such meeting shall, if required, give security in a bond, with two sufficient sureties, for repayment to the summoning officer, in the event of the resolution not being passed, of the costs incurred in relation to such meeting or any poll taken in pursuance of any demand made thereat; the amount of the security to be given by such sureties, and their sufficiency, and the amount of such costs, to be settled by agreement between the summoning officer and such ratepayers or owners, or, in case of dispute, by a court of summary jurisdiction.

L.G. s. 13  
(2).

(4.) The summoning officer shall, on such requisition as aforesaid, fix a time and place for holding such meeting, and shall forthwith give notice thereof—

By advertisement in some one or more of the local newspapers circulated in the district or place;

By causing such notice to be affixed to the principal doors of every church and chapel in the place to which notices are usually affixed.

Ib., (3).

(5.) The summoning officer shall be the chairman of the meeting unless he is unable or unwilling to preside, in which case the meeting on assembling shall choose one of its number as chairman, who may, with the consent of a majority of the persons present, adjourn the same from time to time.

Ib., (4)

(6.) The chairman shall propose to the meeting the resolution, and the meeting shall decide for or against its adoption: Provided, that if any owner or ratepayer demands that such question be decided by a poll of owners and ratepayers, such poll shall be taken by voting papers in the form O. in schedule IV. to this Act, in the same way and with the same incidents and conditions as to the qualification of electors and scale of voting, as to notice to be given by the returning officer, delivery filling up and collection of voting papers, as to the counting of votes, as to penalties for neglect or refusal to comply with the provisions of the Act, and in all respects whatsoever as is provided by the rules for the election of local boards in schedule II. to this Act; except that in districts or places where there is no register of owners and proxies under this Act, any owner or proxy shall be entitled to have a voting paper delivered to him if at least fourteen days before the last day appointed for delivery of the voting papers he sends a claim in writing to the summoning officer



containing the particulars required by schedule II. to this Act to be contained in claims to be entered on the register of owners and proxies, and except that the provisions with respect to certain specified days of the month shall not apply.

For the purposes of such poll the summoning officer shall be the returning officer, and shall have the powers and perform the duties of a returning officer under schedule II. to this Act, so far as the same are applicable to a poll under this schedule.

If no poll is demanded, or the demand for a poll is withdrawn by the persons making the same, a declaration by the chairman shall, in the absence of proof to the contrary, be sufficient evidence of the decision of such meeting.

(7.) A copy, under the hand of the summoning officer, of every resolution so passed, shall be forwarded by him to the Local Government Board; and it shall be his duty to publish a copy thereof by advertisement for three successive weeks in some one or more of the local newspapers circulated in the district or place, and by causing a copy thereof to be affixed to the principal doors of every church and chapel in the place to which notices are usually affixed.

(8.) Where in pursuance of a resolution passed in manner provided by this schedule any place is constituted a local government district, all costs incurred by the summoning officer in relation to the meeting, and any poll taken in pursuance of any demand made thereat, shall be a first charge on the general district rates leviable within such district; in the case of a resolution so passed by owners or ratepayers in any urban district, such costs shall be paid out of the fund or rate applicable by the urban authority to the general purposes of this Act.

See (3) as to expenses when the resolution is not passed.

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## SCHEDULE IV.

### FORMS.

See section 317.

#### FORM A.

##### *Form of Notice requiring Abatement of Nuisance.*

To [person causing the nuisance, or owner or occupier of the premises whereon the nuisance exists, as the case may be].

Take notice that under the provisions of the Public Health Act 1875, the [describe the local authority], being satisfied of the existence of a nuisance at [describe premises or place where the nuisance exists], arising

from [*describe the cause of nuisance, for instance, want of a privy or drain; or for further instance, a ditch or drain so foul as to be a nuisance or injurious to health; or for further instance, swine kept so as to be a nuisance or injurious to health*], do hereby require you within

from the service of this notice to abate the same, and for that purpose to [*state any things required to be done or works to be executed*].

If you make default in complying with the requisitions of this notice, or if the said nuisance, though abated, is likely to recur, a summons will be issued requiring your attendance to answer a complaint which will be made to a court of summary jurisdiction for enforcing the abatement of the nuisance, and prohibiting a recurrence thereof, and for recovering the costs and penalties that may be incurred thereby.

Dated this                      day of                      18 .

*Signature of officer* }  
*of local authority* }

#### FORM B.

#### *Form of Summons.*

#### *Summons.*

To the owner or occupier of [*describe premises*], situated at [*insert such a description as may be sufficient to identify the premises*], or to A.B. of County of                      } You are required to appear before [*describe the court of*  
[*or borough of*                      } *summary jurisdiction*], at the petty sessions [*or court*]  
[*etc. or district of*                      } holden at                      on the                      day of  
*or as the case may be*] to wit.                      next, at the hour of                      in the

noon, to answer the complaint this day made to me by that in or on the premises above mentioned [*or in or on certain premises situated at No.                      in the                      street in the parish of or such other description or reference as may be sufficient to identify the premises*], in the district, under the Public Health Act 1875, of [*describe the local authority*], the following nuisance exists [*describing it, as the case may be*], and that the said nuisance is caused by the act or default of the occupier [*or owner*] of the said premises, or by you A.B. [*or in case the nuisance be discontinued, but likely to be repeated, say, there existed recently, to wit, on or about the                      day of                      on the premises, the following nuisance* [*describe the nuisance*], and that the said nuisance was caused [*etc.*], and although the same has since the said last-mentioned day been abated or discontinued, there is reasonable ground to consider that the same or the like nuisance is likely to recur on the said premises].

Given under my hand and seal this                      day of                      18 .  
J.S.                      (L.S.)

[And if it appear to the court that the nuisance is likely to recur on the premises say, And we (or I), being satisfied that, notwithstanding the said cause or causes of nuisances may be removed under this order, the

same is or are likely to recur, do therefore prohibit the said owner (or occupier, or *A.B.*,) from (*here insert the matter of the prohibition, as, for instance,*) from using the said house or building for human habitation until the same, in our (or my) judgment, is rendered fit for that purpose.]

*In case the nuisance were removed before complaint, say,* Now, on proof here had before us [or me] that at or recently before the time of making the said complaint, to wit, on \_\_\_\_\_ as aforesaid, the cause of nuisance complained of did exist on the said premises, but that the same hath since been removed, yet, notwithstanding such removal, we [or I] being satisfied that it is likely that the same or the like nuisance will recur on the said premises, do hereby prohibit [*order of prohibition*]; and if this order of prohibition be infringed, then we [or I] [*order on local authority to do works*].

Given under the hands and seals of us [or the hand and seal of me, describing the court].

This

day of

18 .

*J.S.* (L.S.)

*J.P.* (L.S.)

#### FORM D.

*Form of Order for Abatement of Nuisance by Local Authority.*

To the town council, etc., as the case may be.

County, etc. } WHEREAS [*recite complaint of nuisance as in last form*].  
to wit.

And whereas it hath been now proved to our [or my] satisfaction that such nuisance exists, but that no owner or occupier of the premises, or person causing the nuisance, is known or can be found [*as the case may be*]; Now we [or I], in pursuance of the said Act, do order the said [*local authority, naming it,*] forthwith to [*here specify the works to be done*].

Given, etc. (*as in last form*).

#### FORM E.

*Form of Order to permit Execution of Works by Owner.*

County of } WHEREAS complaint hath been made to me, *F.F.*, Esquire,  
[or borough, etc.,] } one of Her Majesty's justices of the peace in and for  
to wit. } the county [or borough, etc.] of \_\_\_\_\_ by *A.B.*,  
owner, within the meaning of the Public Health Act 1875, of certain premises [*describe situation of premises so as to identify them*], that *C.D.*



the occupier of the said premises, doth prevent the said *A.B.* from obeying and carrying into effect the provisions of the said Act in this, to wit, that he the said *C.D.* doth prevent the said *A.B.* from [*here describe the works generally, according to circumstances, for instance, thus : constructing and laying down, in connexion with the said house, a covered drain, so as to communicate with a sewer, which the local authority under the said Act of the district of \_\_\_\_\_ are entitled to use, such sewer being within one hundred feet of the said premises*]: And whereas the said *C.D.*, having been duly summoned to answer the said complaint, and not having shown sufficient cause against the same, and it appearing to me that the said works are necessary for the purpose of enabling the said *A.B.* to obey and carry into effect the provisions of the said Act, I do hereby order that the said *C.D.* do permit the said *A.B.* to execute the same in the manner required by the said Act.

Given under my hand and seal, this                  day of                  18 .  
J.S.                  (L.S.)

## FORM F.

*Order of Justice for Admission of Officer of Local Authority.*

WHEREAS [*describe the local authority*] have by their officer [*naming him*] made application to me *A.B.*, one of Her Majesty's justices of the peace having jurisdiction in and for [*describe the place*], and the said officer has made oath to me that demand has been made pursuant to the provisions of the Public Health Act 1875, for admission to [*describe situation of premises so as to identify them*], for the purpose of [*describe the purpose, as the case may be*], and that such demand has been refused.

Now, therefore, I the said *A.B.* do hereby require you [*name the person having custody of the premises*], to admit the said [*name the local authority*], [*or the officer of the said local authority*], to the said premises, for the purpose aforesaid.

Given, *etc.* (as in last form).

## FORM G.

*Form of Notice requiring Owner to Sewer, etc., Private Street.*

To \_\_\_\_\_ the owner of certain premises  
fronting adjoining or abutting on a certain street called \_\_\_\_\_  
within the district of [*describe the local authority*].

Whereas the said street is not sewered levelled paved flagged and channelled to the satisfaction of the above-named [local authority]; and whereas your said premises front adjoin or abut on certain parts of

the said street which require to be sewered levelled paved flagged and channelled: Now, therefore, the said [*local authority*] hereby give you notice (in pursuance of the Public Health Act 1875), to sewer level pave flag and channel the same within the space of [*state the time*], from the date hereof, in manner following; (that is to say,) the sewers to be laid or made [*here describe the mode to be adopted and material to be used*], of the sizes and forms, and at the rate or rates of inclination shown on the plans and sections of the works as prepared by the surveyor of the [*local authority*].

Each gully for surface draining, and its connexion with the sewer, to be placed as shown on the said plans, and to be constructed of the forms materials and dimensions as shown on the said plans.

A foundation for the carriageway and footway in the said street to be formed in the following manner [*here describe the mode to be adopted and the material to be used*], and the said carriageway and footway to be paved [*here describe the mode to be adopted and the material to be used*].

The channel stones to be [*here describe the mode to be adopted and the material to be used*]. The curb or side stones to be [*here describe the mode to be adopted and the material to be used*].

The whole of the above-mentioned works to be executed by you in accordance with the plans and sections herein-before referred to, and now lying for inspection by you at the office of the [*local authority*], situate in street, in aforesaid, and the dimensions, widths, and levels shown thereon, and to be done in a good, workmanlike, and substantial manner, to the satisfaction of the said [*local authority*], or their surveyor.

Dated this                      day of                      18 .  
(Signed)

Clerk to the said [*local authority*].

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#### FORM H.

##### *Form of Mortgage of Rates.*

By virtue of the Public Health Act 1875, we the  
being the local authority under that Act for the district of  
in consideration of the sum of                      paid to the treasurer of the  
said district by *A.B.* of                      for the purposes of the said Act,  
do grant and assign unto the said *A.B.*, his executors administrators  
and assigns, such proportion of the rates arising or accruing by virtue  
of the said Act from [*the rates mortgaged*] as the said sum of  
doth or shall bear to the whole sum which is or shall be borrowed on  
the credit of the said rates, to hold to the said *A.B.*, his executors  
administrators and assigns, from the day of the date hereof until the

said sum of \_\_\_\_\_ with interest at the rate of \_\_\_\_\_ per  
centum per annum for the same, shall be fully paid and satisfied: And it  
is hereby declared, that the said principal sum shall be repaid on the  
\_\_\_\_\_ day of \_\_\_\_\_ at [place of payment]. Dated this  
\_\_\_\_\_ day of \_\_\_\_\_ one thousand eight hundred and  
[To be sealed with the common seal of the local authority.]

## FORM I.

*Form of Transfer of Mortgage.*

I *A.B.* of \_\_\_\_\_, in consideration of the sum of \_\_\_\_\_ paid to me by *C.D.*, of \_\_\_\_\_ do hereby transfer to the said *C.D.*, his executors administrators and assigns, a certain mortgage, bearing date the \_\_\_\_\_ day of \_\_\_\_\_ and made by the local authority under the Public Health Act 1875, for the district of \_\_\_\_\_ for securing the sum of \_\_\_\_\_ and interest thereon at \_\_\_\_\_ per centum per annum [*or if such transfer be by endorsement on the mortgage, insert, instead of the words immediately following the word " assigns," the within security*], and all my right estate and interest in and to the money thereby secured, and in and to the rates thereby assigned. In witness whereof I have hereunto set my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_ one thousand eight hundred and \_\_\_\_\_

*A.B.* (L.S.)

## FORM K.

*Form of Rentcharge.*

By virtue of the Public Health Act 1875, we the  
being the local authority under that Act for the district of  
do hereby declare and absolutely order that the inheritance of the  
[dwelling-house shop lands and premises, *as the case may be*], situated  
in street, in the parish of within the said district,  
and now in the occupation of shall be absolutely charged with  
the sum of pounds, paid by of for the  
improvement by drainage and water supply [*as the case may be*], of the  
same dwelling-house shop lands and premises [*as the case may be*],  
together with interest for the same from the date hereof at  
pounds per centum per annum, until full payment thereof; and also all  
costs incurred by the said his executors administrators or

assigns, under this security, shall be fully paid and satisfied: And we hereby further declare that the said principal and interest moneys shall be paid and payable by the owner or occupier of the said premises to the said                      his executors administrators and assigns, in manner following; (that is to say,) the interest on such principal sum of                      pounds, or on so much thereof as shall from time to time remain due and payable under this order, shall be paid and payable by equal half-yearly payments whilst payable on the                      day of                      and the                      day of                      in every year, the first payment thereof to be made on the                      day of                      next, and such principal sum of                      pounds shall be paid and payable by                      equal annual instalments on the                      day of                      in each of the next succeeding                      years, towards the discharge of the same principal sum, until the whole shall be fully satisfied and discharged.

*[To be sealed with the common seal of the local authority.]*

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#### FORM L.

*Register of Owners for the District of*

*Notice of Time for making Claims and Objections.*

I hereby give notice that all persons who are entitled to vote as owners or proxies at the election of members of the local board for the district of                      , and who are not on the register of owners and proxies now in force, or who being on the register do not retain the qualification or the address described therein, and who are desirous to have their name inserted in the register about to be made for the said district, and all persons who are desirous of objecting to any name on the register now in force, are hereby required to give or send to me, on some one of the first six days of March next, a claim or objection [*as the case may be*] in the form hereunder set forth.

(Signed)

\_\_\_\_\_  
Chairman of the  
local board.

#### *Owner's Claim.*

To the chairman of the local board for the district of

This                      day of                      18

I the undersigned claim to have my name inserted in the register of owners and proxies for the district of                      , pursuant to



the provisions of the Public Health Act 1875, as owner of the property, herein-after described which is situated in the parish of  
that is to say : (a)

I also state that the interest or estate which I have in such property, and the amount of all the rent-service which I receive or pay in respect thereof, and the names of the persons from whom I receive or to whom I pay such rent-service are set forth in the form hereunder written.\*

Description of property (b)	In respect of which I have an estate or interest of (c)	And in respect of which I receive in rent-service the sum of (d)	From (e)	And in respect of which I pay in rent-service the sum of (f)	To (g)
		£ s. d.		£ s. d.	

\_\_\_\_\_  
Signature of claimant.

\_\_\_\_\_  
Address (h) of claimant.

#### Claim of Proxy.

To the chairman of the local board for the district of

This                      day of                      18

I the undersigned having been appointed by                      of

(a) Here insert a clear statement of the property, as "house," "building," "house and                      acres of land."

(b) Describe the property by its name, situation, or the name of the occupier, or any other designation by which it may be identified.

(c) Describe the estate or interest, as *an estate in fee simple, of freehold, a term of                      years*, and also whether it is held by the claimant solely, or jointly with others, and in the case of a partner claiming, insert the number and names of the other partners in the firm.

(d) If the property is let by the owner, insert the amount of rent received from each tenant.

(e) Insert name of tenant or tenants.

(f) If the owner is a lessee paying rent, insert the amount of all the rent he pays.

(g) Insert the name of the lessor.

(h) This need not be the owner's residence, but should be some address within the district.

\* A partner must set out the amount of rent-service which he would receive or pay if the qualifying property were equally divided among his co-partners and himself.

owner [or owners] of the property herein-after described which is situated in the parish of \_\_\_\_\_ to vote as his [or their] proxy pursuant to the provisions of the Public Health Act 1875, claim to have my name inserted in the register of owners and proxies for the district of \_\_\_\_\_ as such proxy.

I herewith transmit to you (a) the writing under the hand [or hands, or in the case of a corporation the seal] of \_\_\_\_\_ appointing me such proxy.

I also state that the interest or estate which \_\_\_\_\_ has [or have] in such property and the amount of the rent-service which he [or they] receives or pays [or pay] in respect thereof and the names of the persons from whom he [or they] receives [or receive] or to whom he [or they] pays [or pay] such rent-service are set forth in the form hereunder written.

Description of Property. (b)	In respect of which the appointor has an estate or interest of (c)	And in respect of which the appointor receives in rent-service the sum of (d)	From (e)	And in respect of which the appointor pays in rent-service the sum of (f)	To (g)
		£ s. d.		£ s. d.	

\_\_\_\_\_  
Signature of proxy.

\_\_\_\_\_  
Address (h) of proxy.

(a) If the appointment itself is not sent, insert the words "an attested copy of."

(b) Describe the property by its name situation or the name of the occupier or any other designation by which it may be identified.

(c) Describe the estate or interest, as *an estate in fee simple, of freehold, a term of \_\_\_\_\_ years*, and whether it is held by the appointor solely or jointly with others.

(d) If the property is let by the appointor, insert the amount of rent received from each tenant.

(e) Insert name of tenant or tenants.

(f) If the appointor is a lessee paying rent, insert the amount of all the rent he pays.

(g) Insert the name of the lessor.

(h) This need not be the proxy's residence, but should be some address within the district.

*Form of Objection.*

To the chairman of the local board of the district of

This                      day of

I hereby give you notice that I object to the name of the person mentioned and described below being retained on the register of owners and proxies for the district of

Christian and surname of the owner or proxy objected to.	Address, as described.	Nature of Qualification, as described.	Description (in case of proxy) of appointor.

\_\_\_\_\_  
Signature of objector.

\_\_\_\_\_  
Address of objector.

## FORM M.

*Appointment of Proxy.*

To the chairman of the local board for the district of

This                      day of                      18 .

I [or we ] the undersigned being the owner [or owners] of the property herein-after described which is situated in the parish of  
do hereby appoint                      to vote as my [or our] proxy in all cases wherein he may lawfully do so, pursuant to the provisions of the Public Health Act 1875. And I [or we] hereby state that the description of the said property is as follows ; viz. (a)

\_\_\_\_\_  
Signature of owner (b).

\_\_\_\_\_  
Address of owner.

(a) Describe the property by its name situation or the name of the occupier or any other designation by which it may be identified.

(b) Or "of three directors"; or in the case of a corporation say, "Given under our common seal," and add the name of the person or persons entitled to affix the seal.

## THE PUBLIC HEALTH ACT 1875.

## FORM N.

*Form of Voting Paper at Elections of Members of Local Boards.**Voting Paper.*

District of

No. of Voting Paper.	Name and Address of Voter.	Number of Votes.	
		As Owner.	As Ratepayer.

Initials of the Voter against the Names of the Persons for whom he intends to vote.	Names of the Persons nominated.*	Residence of the Persons nominated.	Quality or Calling of the Persons nominated.	Name of the Nominator or of one of the Nominators.	Address of such Nominator.

I vote for the persons in the above list against whose names my initials are placed.

(Signed) \_\_\_\_\_

or the mark of \_\_\_\_\_

Witness to the mark \_\_\_\_\_

or \_\_\_\_\_ proxy for \_\_\_\_\_

*Directions to the Voter.*

The voter must write his initials against the name of every person for whom he votes, and must subscribe his name and address at full length.

If the voter cannot write he must make his mark instead of initials, but such mark must be attested by a witness, and such witness must

\* The names of the persons nominated must be inserted in the alphabetical order of their surnames. Sched. II., rule 43.

It will be found convenient to insert at the head of the form the number of persons to be elected.

In printing this form for use, a line should be added for the address of the voter or proxy. It is conceived, however, that the omission to insert the address in conformity with the "directions to the voter" would not invalidate a voting paper.



write the initials of the voter against the name of every person for whom the voter intends to vote.

If a proxy votes he must in like manner write his initials, subscribe his own name and address, and add after his signature the name of the body of persons for whom he is proxy.

This paper will be collected on the \_\_\_\_\_ of \_\_\_\_\_ between the hours of \_\_\_\_\_ and \_\_\_\_\_

### FORM O.

*Form of Voting Paper for Poll taken under Schedule III.*

*Voting Paper No. ( ).*

At a meeting held on the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ in the county of \_\_\_\_\_ it was agreed that the following resolution should be proposed to the owners and ratepayers of \_\_\_\_\_.

*(Set out the resolution.)*

_____	In favour of.	Against.	Number of Votes.	
			As Owner.	As Ratepayer.
Do you vote in favour of or against the adoption of this resolution?				

(Signed) \_\_\_\_\_ \*

or the mark of \_\_\_\_\_

Witness to the mark \_\_\_\_\_

or proxy for \_\_\_\_\_

### *Directions to the Voter.*

The voter must write his initials under the heading "in favour" or "against," according as he votes for or against the resolution, and must subscribe his name and address at full length.

If the voter cannot write he must make his mark instead of initials, but such mark must be attested by a witness, and such witness must write the initials of the voter against his mark.

If a proxy votes he must in like manner write his initials, subscribe his own name and address, and add after his signature the words "as proxy for," with the name of the body of persons for whom he is proxy.

This paper will be collected on the \_\_\_\_\_ of \_\_\_\_\_ between the hours of \_\_\_\_\_ and \_\_\_\_\_

\* See note to form N.

## SCHEDULE V.

## PART I.

Enactments which have been already repealed are in a few instances included in this repeal, in order to avoid the necessity of reference to previous statutes.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
11 & 12 Vict. c. 63. 14 & 15 Vict. c. 28.	The Public Health Act, 1848. The Common Lodging Houses Act, 1851.	The whole Act. The whole Act, except so far as relates to the Metropolitan Police District.
16 & 17 Vict. c. 41.	The Common Lodging Houses Act, 1853.	The whole Act, except so far as relates to the Metropolitan Police District.
18 & 19 Vict. c. 116.	The Diseases Prevention Act, 1855.	The whole Act, except so far as relates to the Metropolitan Police District.
18 & 19 Vict. c. 121.	The Nuisances Removal Act for England, 1855.	The whole Act, except so far as relates to the Metropolitan Police District.
21 & 22 Vict. c. 98.	The Local Government Act, 1858.	The whole Act.
23 & 24 Vict. c. 77.	An Act to amend the Acts for the Removal of Nuisances and the Prevention of Diseases.	The whole Act, except so far as relates to the Metropolitan Police District.
24 & 25 Vict. c. 61.	The Local Government Act (1858) Amendment Act, 1861.	The whole Act.
26 & 27 Vict. c. 17.	The Local Government Act Amendment Act, 1863.	The whole Act.
26 & 27 Vict. c. 117.	The Nuisances Removal Act for England (Amendment) Act, 1863.	The whole Act, except so far as relates to the Metropolitan Police District.
28 & 29 Vict. c. 75.	The Sewage Utilization Act, 1865.	The whole Act, except so far as relates to Scotland and Ireland.
29 & 30 Vict. c. 41.	The Nuisances Removal (No. 1.) Act, 1866.	The whole Act, except so far as relates to the Metropolitan Police District.
29 & 30 Vict. c. 90.	The Sanitary Act, 1866.	Parts I., II., and III., except so far as relates to the Metropolitan Police District or to Scotland or Ireland.
30 & 31 Vict. c. 113.	The Sewage Utilization Act, 1867.	The whole Act, except so far as relates to Scotland or Ireland.
31 & 32 Vict. c. 115.	The Sanitary Act, 1868.	The whole Act, except so far as relates to the Metropolitan Police District.
32 & 33 Vict. c. 100.	The Sanitary Loans Act, 1869.	The whole Act, except so far as relates to the Metropolitan Police District.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
33 & 34 Vict. c. 53.	The Sanitary Act, 1870.	The whole Act, except so far as relates to the Metropolis.
35 & 36 Vict. c. 79.	The Public Health Act, 1872.	The whole Act, except so far as relates to the Metropolis.
37 & 38 Vict. c. 89.	The Sanitary Law Amendment Act, 1874.	The whole Act, except so far as relates to the Metropolitan Police District.

Of the above Acts, the following, (namely,) “The Public Health Act, 1848,” and “The Local Government Act, 1858,” and “The Local Government Act (1858) Amendment Act, 1861,” and “The Local Government Act Amendment Act, 1863,” are in this Act referred to as “The Local Government Acts.”

## PART II.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
12 & 13 Vict. c. 94.	The Public Health Supplemental Act, 1849.	The whole Act, except— Section 1 (Confirmation of certain provisional orders of the General Board of Health), and section 12 (short title of Act), and the schedule.
13 & 14 Vict. c. 90.	The Public Health Supplemental Act, 1850 (No. 2).	The whole Act, except— Section 1 (certain provisional orders of General Board of Health confirmed), and section 7 (short title of Act), and the schedule.
15 & 16 Vict. c. 42.	The first Public Health Supplemental Act, 1852.	Sections 6 to 12, both inclusive (first election or first selection and election of certain local boards), and section 13 (11 & 12 Vict. c. 63. ss. 68, 69, as to repair of highways), and section 14 (interpretation of year), and section 15 (Act incorporated with Public Health Act.)

## PART III.

11 &amp; 12 Vict. c. 63. s. 83.

As to interments within churches.

No vault or gravo shall be constructed or made within the walls of or underneath any church or other place of public worship built in any urban district after the thirty-first day of August one thousand eight hundred and forty eight; and whosoever shall bury, or cause permit or suffer to be buried, any corpse or coffin in any vault or grave constructed or made contrary to this enactment, shall for every such offence be liable to a penalty not exceeding fifty pounds, which may be recovered by any person, with full costs of suit, in an action of debt.

21 &amp; 22 Vict. c. 98. s. 49.

Local board to be burial board in certain cases.

When a vestry of any parish comprised in a local government district resolves to appoint a burial board, the local board may at the option of the vestry be the burial board for such parish, and all expenses incurred by such burial board shall be defrayed out of a rate to be levied in such parish in the same manner as a general district rate.

Provided, that if such parish has been declared a ward for the election of members of the local board, such members shall form the burial board for the parish, and shall be deemed to be a burial board elected under the Burial Acts for the time being in force.

24 &amp; 25 Vict. c. 61. s. 21.

Urban authorities may repair fences surrounding burial grounds.

Any urban authority constituted a burial board may from time to time repair and uphold the fences surrounding any burial ground which has been discontinued as such within their jurisdiction, or take down such fences and substitute others in lieu thereof, and shall from time to time take the necessary steps for preventing the desecration of such burial ground and placing it in a proper sanitary condition; and they may from time to time pass byelaws (subject to the provisions of this Act) for the preservation and regulation of all burial grounds within their jurisdiction; and the expense of carrying this section into execution may be defrayed out of any rates authorised to be levied by any urban authority constituted a burial board.

Local government districts to be within highway districts for purpose of highway meetings.

26 &amp; 27 Vict. c. 17. s. 6.

Where any local government district or any other place is surrounded by or adjoins a highway district constituted under the Highway Acts, such first-mentioned district or other place shall, for the purpose of any meeting of the highway board, be deemed to be within such highway district.



29 & 30 Vict. c. 90. s. 44.

When the district of a burial board is included in or conterminous with the district of an urban authority, the burial board may, by resolution of the vestry, and by agreement of the burial board and urban authority, transfer to the urban authority all their estate property rights powers duties and liabilities, and from and after such transfer the urban authority shall have all such estate property rights powers duties and liabilities as if they had been duly appointed a burial board under the Burial Acts for the time being in force.

Power to burial boards in certain cases to transfer their powers to urban authority.

29 & 30 Vict. c. 90. s. 51.

All penalties imposed by the Act of the sixth year of King George the Fourth, chapter seventy-eight, intituled "An Act to repeal the several laws relating to quarantine, and to make other provisions in lieu thereof," may be reduced by the justices or court having jurisdiction in respect of such penalties to such sum as the justices or court think just.

Power to reduce penalties imposed by 6 G. IV. c. 78.

29 & 30 Vict. c. 90. s. 52.

Every vessel having on board any person affected with a dangerous or infectious disorder shall be deemed to be within the provisions of the Act of the sixth year of King George the Fourth, chapter seventy-eight, although such vessel has not commenced her voyage, or has come from or is bound for some place in the United Kingdom.

Description of vessels within provisions of 6 G. IV. c. 78.

35 & 36 Vict. c. 76. s. 34.

Where in any local Acts the consent sanction or confirmation of one of Her Majesty's Principal Secretaries of State is required with respect to the borrowing of any money, to the giving effect to any byelaws, or to the appointment of any officer for sanitary purposes, the consent sanction or confirmation of the Local Government Board shall be required instead of that of the Secretary of State.

As to consent of local government board required in certain cases.

The consent of the Local Government Board, and not that of the Treasury, shall be required to the borrowing of money for the purposes of the Baths and Wash-houses Acts.

If any question arises as to what are sanitary purposes within the meaning of this section, the determination of the Local Government Board on such question shall be conclusive.

Transfer of powers and duties of Board of Trade under Alkali Act, 1863, and Metropolis Water Acts, 1852 and 1871

35 & 36 Vict. c. 79. s. 35.

The powers and duties of the Board of Trade under the Alkali Act, 1863, and any Act amending the same, and under the Metropolis Water Acts, 1852 and 1871, shall be exerciseable and performed by the Local Government Board, and "the Local Government Board" shall be

to Local  
Govern-  
ment  
Board.

deemed to be substituted for "the Board of Trade" wherever the latter expression occurs in the said Acts.

35 & 36 Viet. c. 79. s. 36.

Transfer  
of powers  
and duties  
of Secre-  
tary of  
State  
under  
Highway  
and Turn-  
pike Acts  
to Local  
Govern-  
ment  
Board.

All powers duties and acts vested in imposed on or required to be done by or to one of Her Majesty's Principal Secretaries of State by the several Acts of Parliament relating to highways in England and Wales, and to turnpike roads and trusts and bridges in England and Wales, shall be imposed on and be done by or to the Local Government Board, subject to the conditions liabilities and incidents to which such powers duties and acts were respectively subject immediately before the passing of the Public Health Act 1872, or as near thereto as circumstances admit.

35 & 36 Viet. c. 79. s. 37.

Transfer  
of officers  
to Local  
Govern-  
ment  
Board.

All inspectors clerks and other officers who are by virtue of section thirty-seven of the Public Health Act 1872 attached to and under the control of the Local Government Board, shall hold their offices and places upon the same terms and conditions, and shall have the same powers privileges and immunities with respect to the performance of their duties, as if this Act had not passed.

The Local Government Board may by order distribute the business to be performed under the Local Government Board amongst such officers and persons in such manner as the Local Government Board may think expedient.

35 & 36 Viet. c. 79. s. 38.

Salary of  
medical  
officer.

Notwithstanding anything contained in any Act of Parliament now in force, there shall be paid out of moneys to be provided by Parliament to the medical officer of the Local Government Board such salary as the Treasury may from time to time determine.

35 & 36 Viet. c. 79. s. 48.

Orders of  
the Local  
Govern-  
ment  
Board—  
how to be  
published.

Every general order of the Local Government Board, made in pursuance of the Poor Law Amendment Act 1834, and the several Acts amending the same, shall be published in the *London Gazette*, and when so published shall take effect in like manner, and shall be of as much force and validity as any general order of the Poor Law Board made and sent in the manner prescribed by the last-mentioned Acts, and no further proceeding shall be necessary in such behalf; and as regards any single order of the said Board, made in pursuance of the said last-mentioned Acts, it shall not be necessary henceforth to send a copy thereof to the clerk to the justices of the petty sessions.

# INCORPORATED PROVISIONS.

## WATERWORKS CLAUSES ACT 1847.

See section 57 of the Public Health Act 1875.

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### *Laying of Pipes.*

With respect to the breaking up of streets for the purpose of laying pipes, be it enacted as follows :

XXVIII. The undertakers, under such superintendence as is herein-after specified, may open and break up the soil and pavement of the several streets and bridges within the limits of the special Act, and may open and break up any sewers drains or tunnels within or under such streets and bridges, and lay down and place within the same limits pipes conduits service pipes and other works and engines, and from time to time repair alter or remove the same, and for the purposes aforesaid remove and use all earth and materials in and under such streets and bridges, and do all other acts which the undertakers shall from time to time deem necessary for supplying water to the inhabitants of the district included within the said limits, doing as little damage as can be in the execution of the powers hereby or by the special Act granted, and making compensation for any damage which may be done in the execution of such powers.

Power to break up streets, &c., under superintendence, and to open drains.

XXIX. Provided always, that nothing herein contained shall authorise or empower the undertakers to lay down or place any pipe conduit service pipe or other work in any land not dedicated to public use without the consent of the owners and occupiers thereof, except that the undertakers at any time may enter upon and lay or place any new pipe in the place of an existing pipe in any land wherein any pipe hath been already lawfully laid down or placed in pursuance of this or the special Act, or any other Act of Parliament, and may repair or alter any pipe so laid down.

Not to enter on private land without consent.

Notice to  
be served  
on persons  
having  
control,  
etc.,  
before  
breaking  
up streets  
or opening  
drains.

XXX. Before the undertakers open or break up any street bridge sewer drain or tunnel, they shall give to the persons under whose control or management the same may be, or to their clerk surveyor or other officer, notice in writing of their intention to open or break up the same, not less than three clear days before beginning such work, except in cases of emergency arising from defects in any of the pipes or other works, and then so soon as is possible after the beginning of the work, or the necessity for the same shall have arisen.

Streets or  
drains not  
to be  
broken up  
except  
under  
superin-  
tendence  
of persons  
having  
control of  
the same.

XXXI. No such street bridge sewer drain or tunnel shall, except in the cases of emergency aforesaid, be opened or broken up, except under the superintendence of the persons having the control or management thereof, or of their officer, and according to such plan as shall be approved of by such persons or their officer, or in case of any difference respecting such plan, then according to such plan as shall be determined by two justices; and such justices may, on the application of the persons having the control or management of such sewer or drain, or their officer, require the undertakers to make such temporary or other works as they may think necessary for guarding against any interruption of the drainage during the execution of any works which interfere with any such sewer or drain: Provided always, that if the persons having such control or management as aforesaid, and their officer, fail to attend at the time fixed for the opening of any such street bridge sewer drain or tunnel, after having had such notice of the intention of the undertakers as aforesaid, or shall not propose any plan for breaking up or opening the same, or shall refuse or neglect to superintend the operation, the undertakers may perform the work specified in such notice without the superintendence of such persons, or their officer.

If persons  
having the  
control,  
etc., fail to  
superin-  
tend, un-  
dertakers  
may per-  
form the  
work with-  
out them.

Streets,  
etc.,  
broken up  
to be re-  
instated  
without  
delay.

XXXII. When the undertakers open or break up the road or pavement of any street or bridge, or any sewer drain or tunnel, they shall with all convenient speed complete the work for which the same shall be broken up, and fill in the ground, and reinstate and make good the road or pavement or the sewer drain or tunnel so opened or broken up, and carry away the rubbish occasioned thereby, and shall at all times whilst any such road or pavement shall be so opened or broken up cause the same to be fenced and guarded, and shall cause a light sufficient for the warning of passengers to be set up and kept thereagainst, every night during which such road or pavement shall be continued open or broken up, and shall, after replacing and making good the road or pavement which shall have been so broken up, keep the same in good repair for three months thereafter, and such further time, if any, not being more than twelve months in the whole, as the soil so broken up shall continue to subside.



XXXIII. If the undertakers open or break up any street or bridge, or any sewer drain or tunnel, without giving such notice as aforesaid, or in a manner different from that which shall have been approved of or determined as aforesaid, or without making such temporary or other works as aforesaid, when so required, except in the cases in which the undertakers are authorised to perform such works without any superintendence or notice, or if the undertakers make any unnecessary delay in completing any such work, or in filling in the ground, or reinstating and making good the road or pavement or the sewer drain or tunnel so opened or broken up, or in carrying away the rubbish occasioned thereby, or if they neglect to cause the place where such road or pavement has been broken up to be fenced guarded and lighted, or neglect to keep the road or pavement in repair for the space of six months next after the same is made good, or such further time as aforesaid, they shall forfeit to the persons having the control or management of the street bridge sewer drain or tunnel in respect of which such default is made a sum not exceeding five pounds for every such offence, and an additional sum of five pounds for each day during which any such delay as aforesaid shall continue after they shall have received notice thereof.

Penalty for delay in reinstating streets, etc.

XXXIV. If any such delay or omission as aforesaid shall take place the persons having the control or management of the street bridge sewer drain or tunnel in respect of which such delay or omission shall take place may cause the work so delayed or omitted to be executed, and the expense of executing the same shall be repaid to such persons by the undertakers, and such expenses may be recovered in the same way as damages are recoverable under this and the special Act.

In case of delay, other parties may reinstate and recover the expenses.

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*Pipes to be laid by the Undertakers.*

And with respect to the communication pipes to be laid by the undertakers, be it enacted as follows :

XLIV. The undertakers shall, upon the request of the owner of any dwelling-house in any street in which pipes shall have been laid down by them, the annual value of which house shall not exceed ten pounds, or upon request of the occupier, with the consent in writing of the owner or reputed owner of any such house, or of the agent of such owner, and upon payment or tender of the proportion of water rate in respect of such house by this or the special Act made payable in advance, lay down communication pipes and other necessary works for the supply of such house with water for domestic or other purposes, and shall keep the same in repair, and thereupon the occupier of such house shall be entitled to have a

Under-takers to lay down communication pipes on request of occupier and with consent of owners in houses of limited value.

sufficient supply of water for his domestic purposes from the undertakers ; and the undertakers may charge for such pipes and works, in addition to the water rate, such reasonable annual rent as shall be agreed upon, or, in case of dispute, as shall be settled by such inspector as aforesaid, when appointed, and in the meantime as shall in England or Ireland be settled by two justices, and in Scotland by the sheriff ; and such rent shall be chargeable on and recoverable from the occupier, or, in his default, from the owner of such house, at the same times and in the same manner as water rates ; and such pipes and other works shall not be subject to distress or to the landlord's hypothec for rent, nor to be taken in execution under any process of a court of law or equity, or under any fiat or sequestration in bankruptcy, against such occupier or against such owner, unless he shall have become the proprietor of the said pipes and works under the provisions herein-after contained.

Penalty on undertakers for refusal to lay communication pipes.

XLV. If, upon such request or consent, and upon tender or payment of such proportion of rate as aforesaid, the undertakers for seven days neglect or refuse to lay down such communication pipes or other works, they shall be liable to forfeit to the person so making such request the sum of five pounds, and a further sum of forty shillings for every day during which such refusal or neglect shall continue after seven days from the making of such request and tender as aforesaid.

Undertakers to be at liberty to remove pipes, and recover expenses of owners or occupiers.

No greater sum to be recovered from occupiers than rent due.

XLVI. If the occupier for the time being of the house in which any such communication pipes or other works and engines shall have been laid down by the undertakers refuse to pay for a supply of water, or if such house be unoccupied for twelve months, the undertakers may demand from the owner thereof payment of the amount of the principal money invested by them in providing and laying down such communication pipes and other works and engines ; and if such owner, after ten days' notice given to him by the undertakers, neglect or refuse to pay such principal money, the undertakers may enter the house and remove such pipes and other works ; and the balance of such principal money, after deducting the value of such pipes and other works, with all arrear of rent for such pipes and works, shall, in default of payment, be recovered, with the costs incurred, from the owner or from the occupier for the time being in the same manner as water rates are directed by this or the special Act to be recovered : Provided always, that no greater sum shall be recovered from any such occupier than the amount of rent for the time being owing by him unless he refuse to discover the amount of rent owing by him ; and that every such occupier shall be entitled to deduct from the amount of rent payable by him the sum so recovered from him, or which he shall have paid on demand.

XLVII. The owner or reputed owner of any house where any such communication pipes or other works shall have been laid down by the undertakers may at any time pay off the amount then due to the undertakers in respect of the costs of providing and laying down such pipes and works, and all rent at that time due in respect thereof, and thereupon such pipes and works shall become the property of such owner, and all further rent in respect thereof shall cease to accrue to the undertakers.

Owner to be at liberty to purchase the pipes.

*Pipes to be laid by the Inhabitants.*

And with respect to the communication pipes to be laid by the inhabitants, be it enacted as follows :

XLVIII. Any owner or occupier of any dwelling-house or part of a dwelling-house within the limits of the special Act who shall wish to have water from the waterworks of the undertakers brought into his premises, and who shall have paid or tendered to the undertakers the portion of water rate in respect of such premises by this or the special Act directed to be paid in advance, may open the ground between the pipes of the undertakers and his premises, having first obtained the consent of the owners and occupiers of such ground, and lay any leaden or other pipes from such premises, to communicate with the pipes of the undertakers, such pipes to be of a strength and material to be approved of by the undertakers, or, in case of dispute, to be settled in England or Ireland by two justices, and in Scotland by the sheriff, or in either case by the inspector to be appointed as aforesaid : Provided always, that every such owner or occupier shall, before he begins to lay any such pipe, give to the undertakers fourteen days' notice of his intention to do so.

Power to inhabitants to lay service pipes, giving the undertakers notice of the same.

XLIX. Before any pipe is made to communicate with the pipes of the undertakers, the person intending to lay such pipe shall give two days' notice to the undertakers of the day and hour when such pipe is intended to be made to communicate with the pipes of the undertakers ; and every such pipe shall be so made to communicate under the superintendence and according to the directions of the surveyor or other officer appointed for that purpose by the undertakers, unless such surveyor or officer fail to attend at the time mentioned in the said notice ; and in case of any dispute as to the manner in which such pipe shall be so made to communicate, it shall in England or Ireland be settled by two justices, and in Scotland by the sheriff, or in either case by the inspector to be appointed as aforesaid.

Communication with the pipes of the undertakers to be made under the superintendence of their surveyor. As to the settling of disputes.

L. The bore of any such pipe as last aforesaid shall not exceed the prescribed limits, and where no limit shall be prescribed it shall not exceed half an inch, except with the consent of the undertakers.

Bore of service pipes.



Service  
pipes may  
be re-  
moved  
after  
giving  
notice of  
the same.

Penalty on  
removing  
pipes with-  
out notice.

Power to  
inhabi-  
tants to  
break up  
pavements  
giving  
notice of  
the same.

Owners or  
occupiers  
entitled to  
demand a  
supply of  
water for  
domestic  
purposes.

LI. Any person who shall have laid down any pipe or other works, or who shall have become the proprietor thereof, may remove the same, after having first given six days' notice in writing to the undertakers of his intention so to do, and of the time of such proposed removal, and every such person shall make compensation to the undertakers for any injury or damage to their pipes or works which may be caused by such removal; and every person who shall remove any such pipe or other works without giving such notice as aforesaid shall forfeit to the undertakers a sum not exceeding five pounds, over and above the damage which he may be found liable to pay in any action at law, at the suit of the undertakers, for the damage done to their pipes or works.

LII. Any such owner or occupier may open or break up so much of the pavement of any street as shall be between the pipe of the undertakers and his house building or premises, and any sewer or drain therein, for any such purpose as aforesaid, doing as little damage as may be, and making compensation for any damage done in the execution of any such work: Provided always, that every such owner or occupier desiring to break up the pavement of any street, or any sewer or drain therein, shall be subject to the same necessity of giving previous notice, and shall be subject to the same control restriction and obligations in and during the time of breaking up the same, and also reinstating the same, and to the same penalties for any delay in regard thereto, as the undertakers are subject to by virtue of this or the special Act.

LIII. Every owner and occupier of any dwelling-house, or part of a dwelling-house within the limits of the special Act shall, when he has laid such communication pipes as aforesaid, and paid or tendered the water rate payable in respect thereof, according to the provisions of this and the special Act, be entitled to demand and receive from the undertakers a sufficient supply of water for his domestic purposes.

#### *Protection of Water.*

And with respect to waste or misuse of the water supplied by the undertakers, be it enacted as follows:

Persons  
using the  
water to  
provide  
cisterns  
and cocks.

LIV. If by the special Act it be provided that the water to be supplied by the undertakers need not be constantly laid on under pressure, every person supplied with water shall, when required by the undertakers, provide a proper cistern to hold the water with which he shall be so supplied with a ball and stop-cock in the pipe bringing the water from the works of the undertakers to such cistern, and shall keep such cistern ball and stop-cock in good repair, so as effectually to prevent the water from running to



waste ; and in case any such person shall, when required by the undertakers, neglect to provide such eistern ball or stop-coek, or to keep the same in good repair, the undertakers may cut off the pipe or turn off the water from the premises of such person until such cistern and ball and stop-coek shall be provided or repaired, as the case may require.

Penalty  
for neg-  
lect.

LV. Every person supplied with water by the undertakers who shall suffer any such cistern pipe ball or stop-coek to be out of repair, so that the water supplied to him by the undertakers shall be wasted, shall forfeit to the undertakers for every such offence a sum not exceeding five pounds.

Penalty  
for suffer-  
ing cistern,  
etc., to be  
out of re-  
pair.

LVI. The undertakers may repair any such eistern pipe ball or stop-coek, so as to prevent any such waste of water, and the expenses of such repair shall be repaid to them by the person so allowing the same to be out of repair, and may be received as damages.

Under-  
takers  
may repair  
cisterns,  
etc., and  
recover  
the  
expenses.

LVII. The surveyor, or any other person acting under the authority of the undertakers, may, between the hours of nine of the clock in the forenoon and four of the clock in the afternoon, enter into any house or premises supplied with water by virtue of this or the special Act in order to examine if there be any waste or misuse of such water ; and if such surveyor or other person at any such time be refused admittance into such dwelling-house or premises for the purpose aforesaid, or be prevented from making such examination as aforesaid, the undertakers may turn off the water supplied by them from such house or other premises.

Power to  
surveyor  
employed  
by under-  
takers to  
enter  
houses to  
inspect,  
etc.

LVIII. Every owner or occupier of any tenement supplied with water under this or the special Act who shall supply to any other person or wilfully permit him to take any such water from any cistern or pipe in such tenement, unless for the purpose of extinguishing any fire, or unless he be a person supplied with water by the undertakers, and the pipes belonging to him be, without his default, out of repair, shall forfeit to the undertakers for every such offence a sum not exceeding five pounds.

Penalty  
for allow-  
ing per-  
sons to use  
the under-  
takers'  
water.

LIX. Every person who, not having agreed to be supplied with water by the undertakers, shall take any water from any reservoir watercourse or conduit belonging to the undertakers, or any pipe leading to any such reservoir watercourse or conduit, or from any cistern or other like place containing water belonging to the undertakers, other than such as may have been provided for the gratuitous use of the public, shall forfeit to the undertakers for every such offence a sum not exceeding ten pounds.

Penalty  
for taking  
the under-  
takers'  
water  
without  
agree-  
ment.

Penalty  
for de-  
stroying  
valves, etc

LX. Every person who shall wilfully or carelessly break injure or open any lock cock valve pipe work or engine belonging to the undertakers, or shall flush or draw off the waters from the reservoirs or other works of the undertakers, or shall do any other wilful act whereby such water shall be wasted, shall forfeit to the undertakers for every such offence a sum not exceeding five pounds.

*Fouling the Water.*

And with respect to the provision for guarding against fouling the water of the undertakers, be it enacted as follows :

Penalties  
for causing  
the water  
of the un-  
dertakers  
to be  
fouled, etc.

LXI. Every person who shall commit any of the offences next herein-after enumerated shall for every such offence forfeit to the undertakers a sum not exceeding five pounds ; (that is to say,)

Every person who shall bathe in any stream reservoir aqueduct or other waterworks belonging to the undertakers, or wash throw or cause to enter therein any dog or other animal :

Every person who shall throw any rubbish dirt filth or other noisome thing into any such stream reservoir aqueduct or other waterworks as aforesaid, or wash or cleanse therein any cloth wool leather or skin of any animal, or any clothes or other thing :

Every person who shall cause the water of any sink sewer or drain, steam engine boiler or other filthy water belonging to him or under his control, to run or be brought into any stream reservoir aqueduct or other waterworks belonging to the undertakers, or shall do any other act whereby the water of the undertakers shall be fouled :

And every such person shall forfeit a further sum of twenty shillings for each day (if more than one) that such last-mentioned offence shall be continued.

Penalty  
for per-  
mitting  
substances  
produced  
in making  
gas to flow  
into the  
under-  
takers'  
works.

LXII. Every person making or supplying gas within the limits of the special Act who shall at any time cause or suffer to be brought or to flow into any stream reservoir aqueduct or waterworks belonging to the undertakers, or into any drain communicating therewith, any washing or other substance which shall be produced in making or supplying gas, or who shall wilfully do any act connected with the making or supplying of gas, whereby the water in any such stream reservoir aqueduct or waterworks shall be fouled, shall forfeit to the undertakers for every such offence the sum of two hundred pounds ; and such penalty shall be recovered, with full costs of suit, in any of the superior courts ; but such penalty shall not be recoverable unless it be sued for during the continuance of the offence, or within six months after it has ceased.

Penalty to  
be sued for  
within six  
months.

LXIII. In addition to the said penalty of two hundred pounds, and whether such penalty have been recovered or not, the person making or supplying gas as aforesaid shall forfeit to the undertakers the sum of twenty pounds, to be recovered in like manner, for each day during which such washing or substance shall be brought or shall flow as aforesaid, or during which the act shall continue by which such water is fouled, after the expiration in either case of twenty-four hours from the time when notice of the offence has been served on such person by the undertakers.

Daily penalty during the continuance of the offence.

LXIV. Whenever the water supplied by the undertakers shall be fouled by the gas of any person making or supplying gas within the limits of the special Act, such person shall forfeit to the undertakers for every such offence a sum not exceeding twenty pounds, and a further sum not exceeding ten pounds for each day during which the offence shall continue after the expiration of twenty-four hours from the service of notice of such offence.

Penalty on gas makers causing water to be fouled.

LXV. For the purpose of ascertaining whether the water of the undertakers be fouled by the gas of any person making or supplying gas within the limits of the special Act, the undertakers may dig up the ground, and examine the pipes conduits and works of the persons making or supplying gas; provided that before proceeding so to dig and examine the undertakers shall give twenty-four hours' notice in writing to the person so making or supplying gas of the time at which such digging and examination is intended to take place, and they shall give the like notice to the persons having the control or management of the pavements or place where such digging shall take place, and they shall be subject to the like obligation of reinstating the road and pavement, and to the same penalties for delay, or any nonfeasance or misfeasance therein, as herein-before provided with respect to roads and pavements broken up by them for laying their pipes.

Power to examine gas pipes, to ascertain cause of water being fouled.

LXVI. If upon such examination it appear that such water has been fouled by any gas belonging to such person, the expenses of the digging examination and repair of the street or place disturbed in any such examination shall be paid by the person making or supplying gas; but if upon such examination it appear that the water has not been fouled by the gas of such person, then the undertakers shall pay all the expenses of the examination and repair, and also make good to the said person any injury which may be occasioned to his works by such examination.

The expenses to abide the result of the examination.

LXVII. The amount of the expenses of every such examination and repair, and any injury done to the undertakers, shall, in case of any dispute about the same, together with the costs of ascertaining and recovering the same, be ascertained and recovered in

How expense to be ascertained.



the same manner as damages for the ascertaining and recovery whereof no special provision is made are directed to be ascertained and recovered.

### *Water Rates.*

And with respect to the payment and recovery of the water rates, be it enacted as follows :

Rates to be payable according to the annual value of the premises.

LXVIII. The water rates, except as herein-after and in the special Act mentioned, shall be paid by and be recoverable from the person requiring receiving or using the supply of water, and shall be payable according to the annual value of the tenement supplied with water, and if any dispute arise as to such value the same shall be determined by two justices.

Where several houses supplied by one pipe, each to pay.

LXIX. When several houses or parts of houses in the separate occupation of several persons are supplied by one common pipe, the several owners or occupiers of such houses or parts of houses shall be liable to the payment of the same rates for the supply of water as they would have been liable to if each of such several houses or parts of houses had been supplied with water from the works of the undertakers by a separate pipe.

Rates to be paid quarterly.

LXX. The rates shall be paid in advance by equal quarterly payments, in England or Ireland at Christmas Day Lady Day Midsummer Day and Michaelmas Day, and in Scotland at Martinmas Candlemas Whitsuntide and Lammas, and the first payment shall be made at the time when the pipe by which the water is supplied is made to communicate with the pipes of the undertakers, or at the time when the agreement to take water from the undertakers is made.

Parties giving notice to discontinue use of water, or removing, to pay to the next quarter day.

LXXI. The occupier of any dwelling-house or part of a dwelling-house liable to the payment of any water rate, who shall give notice of his intention to discontinue the use of the water supplied by the undertakers, or who shall remove from his dwelling between any two quarterly days of payment, shall pay the water rate in respect of such dwelling-house or part of a dwelling-house for the quarter ending on the quarterly day of payment next after his quitting the same or giving such notice.

Owners of houses not exceeding 10*l.* rent to be liable to water rates.

LXXII. The owners of all dwelling-houses or parts of dwelling-houses occupied as separate tenements, the annual value of which houses or tenements shall not exceed the sum of ten pounds, shall be liable to the payment of the rates instead of the occupiers thereof; and the powers and provisions herein or in the special Act contained for the recovery of rates from occupiers shall be construed to apply to the owners of such houses and tenements:



and the person receiving the rents of any such house or tenement as aforesaid from the occupier thereof, on his own account, or as agent or receiver for any person interested therein, shall be deemed the owner of such house or tenement.

LXXIII. Provided always, That when any owner shall pay any such rate in respect of any such dwelling-house or part of a dwelling-house which shall be in the occupation of any tenant under any lease or agreement made prior to the passing of the special Act, such tenant shall repay to the owner all sums which shall be so by him paid during the continuance of such lease, unless it had been agreed that the owner shall pay the water rates in respect of such dwelling-house or part of a dwelling-house; and every such sum of money payable by the tenant to the owner, under the provision herein-before contained, may be recovered, if the same be not paid upon demand, as arrears of rent could be recovered from the occupier by the said owner.

Tenants under existing leases to repay the owner.

LXXIV. If any person supplied with water by the undertakers, or liable as herein or in the special Act provided to pay the water rate, neglect to pay such water rate at any of the said times of payment thereof, the undertakers may stop the water from flowing into the premises in respect of which such rate is payable, by cutting off the pipe to such premises, or by such means as the undertakers shall think fit, and may recover the rate due from such person, if less than twenty pounds, with the expenses of cutting off the water, and costs of recovering the rate, in the same manner as any damages for the recovery of which no special provision is made are recoverable by this or the special Act; or if the rate so due amount to twenty pounds or upwards, the undertakers may recover the same, with the expenses of cutting off the water, by action in any court of competent jurisdiction.

Rates—how to be recovered.

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## WATERWORKS CLAUSES ACT 1863.

26 & 27 VICT., CAP. 93.

An Act for consolidating in one Act certain provisions frequently inserted in Acts relating to waterworks. [28th July 1863.]

WHEREAS The Waterworks Clauses Act 1847 was passed in order to comprise in one Act sundry provisions which were at the time of the passing of that Act usually introduced into Acts of Parliament authorising the construction of certain waterworks :

10 & 11 Viet. c. 17.

And whereas sundry provisions of the like nature, but not comprised in the said Act, are now frequently introduced into Acts of

Parliament relating to waterworks, and it is expedient to comprise such last-mentioned provisions also in one Act, and that as well for the purpose of avoiding the necessity of repeating such provisions in special Acts relating to waterworks, as for ensuring greater uniformity in the provisions themselves :

Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

*Preliminary.*

Short title. I. This Act may be cited as The Waterworks Clauses Act 1863 ; and The Waterworks Clauses Act 1847, and this Act may be cited together as The Waterworks Clauses Acts 1847 and 1863.

Applica-  
tion of Act  
and inter-  
pretation  
of terms. II. This Act shall apply to any waterworks to which any special Act hereafter passed and incorporating this Act relates ; and every such special Act is herein-after referred to as "the Special Act."

Terms used in this Act have the same meanings as the same terms have when used in The Waterworks Clauses Act 1847.

The provisions respecting the recovery of penalties contained in the last-mentioned Act shall be incorporated with this Act.

*Security of Reservoirs.*

And with respect to the security of the reservoirs constructed by the undertakers, be it enacted as follows :

Power for  
justices to  
inquire as  
to danger  
of reser-  
voir. III. Whenever any person interested complains to two justices that any reservoir constructed by the undertakers is in a dangerous state, such justices shall forthwith make inquiry into the truth of the complaint ; or two justices, on their own view, and without complaint by any person, may proceed under the present provisions as if a complaint had been so made to them.

Order of  
justices for  
immediate  
repair. IV. If, on any such inquiry, the justices are satisfied that the complaint is well founded, and that the reservoir is in a dangerous state, and that the danger is so imminent as not to admit of delay in removing the cause of complaint, they shall order such person as they think fit to enter on the property of the undertakers, and to lower the water in the reservoir, and to execute and do all such works and things as the justices think requisite and proper for removing the cause of complaint.

Order of  
justices on  
under-  
takers to  
repair  
reservoir. V. If, on any such inquiry, the justices are satisfied that there is good cause of complaint, but are not satisfied that the reservoir is in such an imminently dangerous state as not to admit of delay in removing the cause of complaint, they shall issue their summonses to

the undertakers to answer the complaint; and upon hearing the parties, the justices may, or upon default of appearance of the undertakers, then in their absence, the justices shall, order the undertakers, within such period as the justices think reasonable and specify in the order, to lower the water in the reservoir, and to execute and do all such works and things as the justices think requisite and proper for removing the cause of complaint.

If the undertakers fail to execute or do within that period any such work or thing, the justices who made the order, or any other two justices, on being satisfied of such failure, may either order such persons as the justices think fit to enter on the property of the undertakers, and to lower the water in the reservoir, and to execute and do all such works and things as the justices think requisite and proper for removing the cause of complaint; or may, if they think fit, by order impose on the undertakers a penalty, not exceeding ten pounds, for every day during which such failure continues after the making of the order imposing the penalty.

Order of justices on failure of undertakers to repair.

VI. Any order of justices made in any of the cases aforesaid shall be in writing under their hands, and may be in the form set forth in the schedule to this Act, with such variations as circumstances require.

Form of order.

VII. Any person acting under and in pursuance of any such Order shall not be deemed a trespasser; and if any person wilfully obstructs any person lawfully acting in obedience to any such order, or wilfully does, or instigates or suffers to be done anything in contravention thereof, he shall for every such offence be liable to a penalty not exceeding fifty pounds.

Persons acting under order not trespassers.

VIII. The justices may order all, or such part as they think fit, of the costs of and incident to the applying for and obtaining of any such order to be paid by the undertakers, and also all, or such part as the justices think fit, of the expenses of the works and things executed and done in pursuance of any such order by any person other than the undertakers, to be paid by the undertakers to such person as the justices appoint.

Order for payment of costs and expenses.

If the justices before whom the complaint is made think that there is no sufficient ground for the complaint, they may, if they think fit, order the complainant to pay to the undertakers the whole or any part of their costs of or incident to the complaint.

IX. If the undertakers consider themselves aggrieved by any order or determination of justices under the present provisions, they may in like manner and subject to the like conditions as by The Railways Clauses Consolidation Act, 1845, are provided in the case of appeals in respect of penalties, appeal to the court of general or quarter sessions for the county or place where the

Appeal by undertakers.



cause of appeal arises ; and that court may, on the hearing of the appeal, either affirm or quash the order or determination, or make such other order in the premises as may seem fit, and may make such order as to the costs, both of the original proceedings and of the appeal, as may seem fit ; but the order or determination appealed against shall, pending the appeal, continue in force.

Under-takers not to be responsible for consequences of order.

X. Notwithstanding anything in the special Act contained, the undertakers shall not be liable to pay any damages penalties costs charges or expenses for or in respect of, or be answerable or accountable for, any diminution or cessation of the supply of water, or any other breach or non-performance of their or any of their duties liabilities or obligations under the special Act, that may be occasioned by or result from the execution of any such order.

Provisions as to Scotland.

XI. The present provisions with respect to the security of reservoirs shall apply to England and Ireland ; and they shall also apply to Scotland, subject to the following variations, namely,—the sheriff shall be deemed to be empowered thereby, as well as two justices ; and the appeal given shall lie from two justices in manner provided by sections one hundred and fifty-one and one hundred and fifty-two of The Railways Clauses Consolidation (Scotland) Act 1845, and shall lie from a sheriff substitute to the sheriff depute, where the matter comes in the first instance before a sheriff substitute ; and in that case the sheriff depute shall hear and determine the appeal, and may either confirm recall vary or supersede the order of the sheriff substitute as he thinks proper ; and the costs of the appeal shall be in the discretion of the sheriff ; and the order or judgment of the sheriff in the appeal shall be final.

### *Supply of Water.*

And with respect to the supply of water to be furnished by the undertakers, be it enacted as follows :

Supply for other than domestic purposes.

XII. A supply of water for domestic purposes shall not include a supply of water for cattle, or for horses, or for washing carriages where such horses or carriages are kept for sale or hire or by a common carrier, or a supply for any trade manufacture or business, or for watering gardens, or for fountains, or for any ornamental purpose.

Want of supply for other than domestic purposes, when excused.

XIII. Where the undertakers are authorised by the special Act to supply water for other than domestic purposes, they shall not be liable, in the absence of express stipulation, under any agreement for the supply of water for other than domestic purposes, to any penalty or damages for not supplying such water, if the want of such supply arises from frost, unusual drought, or other unavoidable cause or accident.



XIV. Where the undertakers are authorised by the special Act to supply water by measure, they may let for hire to any consumer of water so supplied any meter or instrument for measuring the quantity of water supplied and consumed, and any pipes and apparatus for the conveyance, reception, or storage of the water, for such remuneration in money as may be agreed upon between them and the consumer, which shall be recoverable in the same manner as rates due to the undertakers for water ; and the meters instruments pipes and apparatus shall not be subject to distress or to the landlord's hypothec for rent of the premises where the same are used, or be attached or taken in execution under any process of any court of law or equity, or under or in pursuance of any adjudication or order in bankruptcy, or other legal proceeding, against or affecting the consumer of the water or the occupier of the premises, or other the person in whose possession the meters instruments pipes and apparatus may be.

Power to let meters for hire.

XV. The officers of the undertakers may enter any house building or lands to through or into which water is supplied by them by measure, in order to inspect the meters instruments pipes and apparatus for the measuring conveyance reception or storage of water, or for the purpose of ascertaining the quantity of water supplied or consumed, and may from time to time enter any house building or lands for the purpose of removing any meter instrument pipe or apparatus the property of the undertakers ; and if any person hinders any such officer from entering or making such inspection, or effecting such removal, he shall for every such offence be liable to a penalty not exceeding five pounds ; but, except with the consent of the justice or the sheriff, this power of entry shall be exercised only between the hours of ten in the forenoon and four in the afternoon.

Power for ascertaining quantity consumed by meter, and for removing meters, etc.

### *Protection of Water.*

And with respect to the waste or misuse of the water supplied by or belonging to the undertakers, be it enacted as follows :

XVI. If any person supplied with water by the undertakers wrongfully does or causes or permits to be done anything in contravention of any of the provisions of the special Act, or wrongfully fails to do anything which, under any of those provisions, ought to be done for the prevention of the waste misuse undue consumption or contamination of the water of the undertakers. they may (without prejudice to any remedy against him in respect thereof) cut off any of the pipes by or through which water is supplied by them to him or for his use, and may cease to supply him with water so long as the cause of injury remains or is not remedied.

Power to cut off water in certain cases.

Penalty  
for waste,  
etc., of  
water by  
non-repair  
of pipes,  
&c.

XVII. If any person supplied with water by the undertakers wilfully or negligently causes or suffers any pipe valve cock cistern bath soil-pan watercloset or other apparatus or receptacle to be out of repair, or to be so used or contrived as that the water supplied to him by the undertakers is or is likely to be wasted misused unduly consumed or contaminated, or so as to occasion or allow the return of foul air, or other noisome or impure matter, into any pipe belonging to or connected with the pipes of the undertakers, he shall for every such offence be liable to a penalty not exceeding five pounds.

Penalty  
for appli-  
cation of  
water con-  
trary to  
agree-  
ment.

XVIII. If any person—

First, not having from the undertakers a supply of water for other than domestic purposes, uses, for other than domestic purposes, any water supplied to him by the undertakers; or

Secondly, having from the undertakers a supply of water for any other than domestic purposes, uses, for any purposes other than those for which he is entitled to use the same, any water supplied to him by the undertakers,—

he shall for every such offence be liable to a penalty not exceeding forty shillings, without prejudice to the right of the undertakers to recover from him the value of the water misused.

Penalty  
for exten-  
sion or  
alteration  
of pipes.

XIX. It shall not be lawful for the owner or occupier of any premises supplied with water by the undertakers, or any consumer of the water of the undertakers, or any other person, to affix or cause or permit to be affixed any pipe or apparatus to a pipe belonging to the undertakers, or to a communication or service pipe belonging to or used by such owner occupier consumer or other person, or to make any alteration in any such communication or service pipe, or in any apparatus connected therewith, without the consent, in every such case, of the undertakers; and if any person acts in any respect in contravention of the provisions of the present section, he shall for every such offence be liable to a penalty not exceeding five pounds, without prejudice to the right of the undertakers to recover damages from him in respect of any injury done to their property, and without prejudice to their right to recover from him the value of any water wasted misused or unduly consumed.

Penalty  
for use of  
water  
without  
agree-  
ment.

XX. If any person, not being supplied with water by the undertakers, wrongfully takes or uses any water from any reservoir watercourse conduit or pipe belonging to the undertakers, or from any pipe leading to or from any such reservoir watercourse conduit or pipe, or from any cistern or other like place containing water belonging to the undertakers, or supplied by them for the use of any consumer of the water of the undertakers, he shall for every such offence be liable to a penalty not exceeding five pounds.

### Recovery of Rates.

And with respect to the recovery of water rates and other money, be it enacted as follows :

XXI. If any person refuses or neglects to pay to the undertakers any rate or sum due to them under the special Act, they may recover the same, with costs, in any court of competent jurisdiction; and their remedy under the present section shall be in addition to their other remedies for the recovery thereof.

## SCHEDULE.

*Form of Order of Justices.*

To A.B. of etc.

We the undersigned, two of Her Majesty's justices of the peace acting for the [county] of \_\_\_\_\_ do hereby order and direct you [and such person and persons as you may require to aid and assist you herein,] forthwith to lower the water in the [*here describe the reservoir and the extent to which the water is to be lowered*], and to do all such works and things as are requisite to repair and make secure the said reservoir [and you shall do as little injury as possible to the property of the \_\_\_\_\_ and for acting as you are hereby directed this shall be your sufficient warrant].

Given under our hands this                      day of  
one thousand eight hundred and

A.B.  
C.D.

## TOWNS IMPROVEMENT CLAUSES ACT 1847.

10 &amp; 11 VICT., CAP. 34.

\* \* \* \* \*

*Naming Streets.*

And with respect to naming the streets and numbering the houses, be it enacted as follows :

Houses to be numbered and streets named.

LXIV. The commissioners shall from time to time cause the houses and buildings in all or any of the streets to be marked with numbers as they think fit, and shall cause to be put up or painted on a conspicuous part of some house building or place at or near each end corner or entrance of every such street the name by which such street is to be known ; and every person who destroys pulls down or defaces any such number or name, or puts up any number or name different from the number or name put up by the commissioners, shall be liable to a penalty not exceeding forty shillings for every such offence.

Numbers of houses to be renewed by occupiers.

LXV. The occupiers of houses and other buildings in the streets shall mark their houses with such numbers as the commissioners approve of, and shall renew such numbers as often as they become obliterated or defaced ; and every such occupier who fails within one week after notice for that purpose from the commissioners to mark his house with a number approved of by the commissioners, or to renew such number when obliterated, shall be liable to a penalty not exceeding forty shillings ; and the commissioners shall cause such numbers to be marked or to be renewed, as the case may require, and the expense thereof shall be repaid to them by such occupier, and shall be recoverable as damages.

*Improving Streets.*

And with respect to improving the line of the streets and removing obstructions, be it enacted as follows :

Houses may be set forward for improving line of street.

LXVI. The commissioners may allow, upon such terms as they think fit, any building within the limits of the special Act to be set forward for improving the line of the street in which such building or any building adjacent thereto is situated.

Commissioners may purchase houses or ground for effecting

LXVII. The commissioners may agree with the owners of any lands within the limits of the special Act for the absolute purchase thereof, for the purpose of widening enlarging or otherwise improving any of the streets, and they shall re-sell any parts of the



land so purchased which shall not be wanted for the enlargement of the street.

additional improvements.

LXVIII. When any house or building, any part of which projects beyond the regular line of the street or beyond the front of the house or building on either side thereof, has been taken down in order to be rebuilt or altered, the commissioners may require the same to be set backwards to or toward the line of the street, or the line of the adjoining houses or buildings, in such manner as the commissioners direct, for the improvement of such street: Provided always, that the commissioners shall make full compensation to the owner of any such house or building for any damage he thereby sustains.

Houses projecting beyond line of street, when taken down, to be set back.

LXIX. The commissioners may give notice to the occupier of any house or building to remove or alter any porch shed projecting window step cellar door or window sign sign post sign iron showboard window shutter wall gate or fence or any other obstruction or projection erected or placed, after the passing of the special Act, against or in front of any house or building within the limits of the special Act, and which is an obstruction to the safe and convenient passage along any street; and such occupier shall, within fourteen days after the service of such notice upon him, remove such obstruction, or alter the same in such manner as shall have been directed by the commissioners, and in default thereof shall be liable to a penalty not exceeding forty shillings; and the commissioners in such case may remove such obstruction or projection, and the expense of such removal shall be paid by the occupier so making default and shall be recoverable as damages: Provided always, that, except in the case in which such obstructions or projections were made or put up by the occupier, such occupier shall be entitled to deduct the expense of removing the same from the rent payable by him to the owner of the house or building.

Future projections of houses, etc., to be removed on notice.

LXX. If any such obstructions or projections were erected or placed against or in front of any house or building in any such street before the passing of the special Act, the commissioners may cause the same to be removed or altered as they think fit: Provided that they give notice of such intended removal or alteration to the occupier of the house or building against or in front of which such obstruction or projection shall be thirty days before such alteration or removal is begun, and, if such obstructions or projections shall have been lawfully made, they shall make reasonable compensation to every person who suffers damage by such removal or alteration.

Commissioners may cause existing projections to be removed and compensation to be made.

LXXI. All doors gates and bars put up after the passing of the special Act, within the limits thereof, and which open upon any street, shall be hung or placed so as not to open outwards, except when, in the case of public buildings, the commissioners allow such

Doors in future to be made to open inwards.

doors gates or bars to be otherwise hung or placed : and if, except as aforesaid, any such door gate or bar be hung or placed so as to open outwards on any street, the occupier of such house building yard or land shall, within eight days after notice from the commissioners to that effect, cause the same to be altered so as not to open outwards ; and in case he neglect so to do, the commissioners may make such alteration, and the expenses of such alteration shall be paid to the commissioners by such occupier, and shall be recoverable from him as damages, and he shall, in addition, be liable to a penalty not exceeding forty shillings.

Doors opening outwards may be altered.

LXXII. If any such door gate or bar was before the passing of the special Act hung so as to open outwards upon the street, the commissioners may alter the same, so that no part thereof when open shall project over any public way.

Coverings for cellar doors to be made by occupier.

LXXIII. When any opening is made in any pavement or footpath within the limits of the special Act, as an entrance into any vault or cellar, a door or covering shall be made by the occupier of such vault or cellar, of iron or such other materials, and in such manner as the commissioners direct, and such door or covering shall from time to time be kept in good repair by the occupier of such vault or cellar ; and if such occupier do not within a reasonable time make such door or covering, or if he make any such door or covering contrary to the directions of the commissioners, or if he do not keep the same when properly made in good repair, he shall for every such offence be liable to a penalty not exceeding five pounds.

Penalty for neglect.

Water-spouts to be affixed to houses or buildings.

LXXIV. The occupier of every house or building in adjoining or near to any street shall, within seven days next after service of an order of the commissioners for that purpose, put up and keep in good condition a shoot or trough of the whole length of such house or building, and shall connect the same either with a similar shoot on the adjoining house or with a pipe or trunk to be fixed to the front or side of such building from the roof to the ground, to carry the water from the roof thereof, in such manner that the water from such house, or any portico or projection therefrom, shall not fall upon the persons passing along the street, or flow over the footpath ; and in default of compliance with any such order within the period aforesaid such occupier shall be liable to a penalty not exceeding forty shillings for every day that he shall so make default.

*Ruinous or Dangerous Buildings.*

And with respect to ruinous or dangerous buildings, be it enacted as follows :

LXXV. If any building or wall, or anything affixed thereon, within the limits of the special Act, be deemed by the surveyor of the commissioners to be in a ruinous state, and dangerous to passengers or to the occupiers of the neighbouring buildings, such surveyor shall immediately cause a proper hoard or fence to be put up for the protection of passengers, and shall cause notice in writing to be given to the owner of such building or wall, if he be known and resident within the said limits, and shall also cause such notice to be put on the door or other conspicuous part of the said premises, or otherwise to be given to the occupier thereof, if any, requiring such owner or occupier forthwith to take down secure or repair such building wall or other thing as the case shall require ; and if such owner or occupier do not begin to repair take down or secure such building wall or other thing within the space of three days after any such notice has been so given or put up as aforesaid, and complete such repairs or taking down or securing as speedily as the nature of the case will admit, the said surveyor may make complaint thereof before two justices, and it shall be lawful for such justices to order the owner, or in his default the occupier (if any), of such building wall or other thing, to take down rebuild repair or otherwise secure, to the satisfaction of such surveyor, the same or such part thereof as appears to them to be in a dangerous state, within a time to be fixed by such justices ; and in case the same be not taken down repaired rebuilt or otherwise secured within the time so limited, or if no owner or occupier can be found on whom to serve such order, the commissioners shall with all convenient speed cause all or so much of such building wall or other thing as shall be in a ruinous condition, and dangerous as aforesaid, to be taken down repaired rebuilt or otherwise secured in such manner as shall be requisite ; and all the expenses of putting up every such fence and of taking down repairing rebuilding, or securing such building wall or other thing, shall be paid by the owner thereof.

Ruinous or dangerous buildings to be taken down or secured by owners, etc.

If owner, etc., neglect to repair, commissioners may cause the same to be done, charging owner, etc., with the expenses.

LXXVI. If such owner can be found within the limits of the special Act, and if on demand of the expenses aforesaid he neglect or refuse to pay the same, then such expenses may be levied by distress, and any justice may issue his warrant accordingly.

The expenses to be levied by distress on the owner.

LXXVII. If such owner cannot be found within the said limits, or sufficient distress of his goods and chattels within the said limits cannot be made, the commissioners, after giving twenty-eight days' notice of their intention to do so, by posting a printed or written notice in a conspicuous place on such building, or on the land

If owner cannot be found, commissioners may take the house



or ground, making compensation provided by 7 & 8 Vict., c. 18.

whereon such building stood, may take such building or land, provided that such expenses be not paid or tendered to them within the said twenty-eight days, making compensation to the owner of such building or land in the manner provided by the Lands Clauses Consolidation Act, 1845, in the case of lands taken otherwise than with the consent of the owners and occupiers thereof, and the commissioners shall be entitled to deduct out of such compensation the amount of the expenses aforesaid, and may thereupon sell or otherwise dispose of the said building or land for the purposes of this Act.

Commissioners may sell the materials, restoring to the owner overplus arising from the sale.

LXXVIII. If any such house or building as aforesaid, or any part of the same, be pulled down by virtue of the powers aforesaid, the commissioners may sell the materials thereof, or so much of the same as shall be pulled down, and apply the proceeds of such sale in payment of the expenses incurred in respect of such house or building; and the commissioners shall restore any overplus arising from such sale to the owner of such house or building on demand; nevertheless, the commissioners, although they sell such materials for the purposes aforesaid, shall have the same remedies for compelling the payment of so much of the said expenses as may remain due after the application of the proceeds of such sale as are hereinbefore given to them for compelling the payment of the whole of the said expenses.

#### *Precautions during Repairs.*

And with respect to precautions during the construction and repair of the sewers streets and houses, be it enacted as follows:

Bars to be erected across streets while repairs or alterations are making, and lights placed at night.

LXXIX. The commissioners shall, during the construction or repair of any of the streets vested in them, and during the construction or repair of any sewers or drains, take proper precaution for guarding against accident, by shoring-up and protecting the adjoining houses, and shall cause such bars or chains to be fixed across or in any of the streets, to prevent the passage of carriages and horses while such works are carried on, as to them shall seem proper; and the commissioners shall cause any sewer or drain or other works, during the construction or repair thereof by them, to be lighted or guarded during the night, so as to prevent accidents; and every person who takes down alters or removes any of the said bars or chains, or extinguishes any light, without the authority or consent of the commissioners, shall for every such offence be liable to a penalty not exceeding five pounds.

Hoards to be set up during repairs.

LXXX. Every person intending to build or take down any building within the limits of the special Act, or to cause the same to be so done, or to alter or repair the outward part of any such building, or to cause the same to be so done, where any street or



footway will be obstructed or rendered inconvenient by means of such work, shall before beginning the same cause sufficient hoards or fences to be put up, in order to separate the building where such works are being carried on from the street, with a convenient platform and handrail, if there be room enough, to serve as a footway for passengers, outside of such hoard or fence, and shall continue such hoard or fence, with such platform and handrail as aforesaid, standing and in good condition, to the satisfaction of the commissioners during such time as the public safety or convenience requires, and shall in all cases in which it is necessary, in order to prevent accidents, cause the same to be sufficiently lighted during the night; and every such person who fails to put up such fence or hoard, or platform with such handrail, as aforesaid, or to continue the same respectively standing and in good condition as aforesaid during the time aforesaid, or who does not, while the said hoard or fence is standing, keep the same sufficiently lighted in the night, or who does not remove the same when directed by the commissioners, within a reasonable time afterwards, shall for every such offence be liable to a penalty not exceeding five pounds, and a further penalty not exceeding forty shillings for every day while such default is continued.

LXXXI. When any building materials rubbish or other things are laid, or any hole made, in any of the streets, whether the same be done by order of the commissioners or not, the person causing such materials or other things to be so laid, or such hole to be made, shall at his own expense cause a sufficient light to be fixed in a proper place upon or near the same, and continue such light every night from sun-setting to sun-rising while such materials or hole remain; and such person shall at his own expense cause such materials or other things and such hole to be sufficiently fenced and inclosed until such materials or other things are removed or the hole filled up or otherwise made secure; and every such person who fails so to light fence or inclose such materials or other things or such hole shall for every such offence be liable to a penalty not exceeding five pounds, and a further penalty not exceeding forty shillings for every day while such default is continued.

Penalty  
for not  
lighting  
deposits of  
building  
materials  
or excava-  
tions.

LXXXII. In no case shall any such building materials or other things or such hole be allowed to remain for an unnecessary time, under a penalty not exceeding five pounds to be paid for every such offence by the person who causes such materials or other things to be laid or such hole to be made, and a further penalty not exceeding forty shillings for every day during which such offence is continued after the conviction for such offence; and in any such case the proof that the time has not exceeded the necessary time shall be upon the person so causing such materials or other things to be laid, or causing such hole to be made.

Penalty  
for con-  
tinuing  
deposits of  
building  
materials  
or excava-  
tions an  
unreason-  
able time.

LXXXIII. If any building or hole or any other place near any street be, for want of sufficient repair protection or inclosure,

Danger-  
ous places

to be re-  
paired or  
inclosed.

dangerous to the passengers along such street, the commissioners shall cause the same to be repaired protected or inclosed so as to prevent danger therefrom ; and the expenses of such repair protection or inclosure shall be repaid to the commissioners by the owner of the premises so repaired protected or inclosed, and shall be recoverable from him as damages.

### *Slaughter Houses.*

Commis-  
sioners  
may  
license  
slaughter-  
houses etc.

And with respect to slaughter-houses, be it enacted as follows :

CXXV. The commissioners may license such slaughter-houses and knackers' yards as they from time to time think proper for slaughtering cattle within the limits of the special Act.

No new  
slaughter  
houses in  
future to  
be erected  
without a  
license.

CXXVI. No place shall be used or occupied as a slaughter-house or knacker's yard within the said limits which was not in such use and occupation at the time of the passing of the special Act and has so continued ever since, unless and until a license for the erection thereof, or for the use and occupation thereof as a slaughter-house or knacker's yard, have been obtained from the commissioners ; and every person who, without having first obtained such license as aforesaid, uses as a slaughter-house or knacker's yard any place within the said limits not used as such at the passing of the special Act, and so continued to be used ever since, shall for each offence be liable to a penalty not exceeding five pounds, and a like penalty for every day after the conviction for such offence upon which the said offence is continued.

Existing  
slaughter-  
houses etc.  
to be  
registered.

CXXVII. Every place within the limits of the special Act which shall be used as a slaughter-house or knacker's yard shall, within three months after the passing of such Act, be registered by the owner or occupier thereof at the office of the commissioners ; and on application to the commissioners for that purpose the commissioners shall cause every such slaughter-house or knacker's yard to be registered in a book to be kept by them for that purpose ; and every person who after the expiration of the said three months, and after one week's notice of this provision from the commissioners, uses or suffers to be used any such place as a slaughter-house or knacker's yard without its being so registered shall be liable to a penalty not exceeding five pounds for such offence, and a penalty not exceeding ten shillings for every day after the first day during which such place shall be used as a slaughter-house or knacker's yard without having been so registered.

Commis-  
sioners  
may make  
byelaws  
for regu-  
lation of  
slaughter-  
houses etc.

CXXVIII. The commissioners shall from time to time, by bye-laws to be made and confirmed in the manner herein-after provided, make regulations for the licensing registering and inspection of the said slaughter-houses and knackers' yards, and preventing cruelty therein, and for keeping the same in a cleanly and proper state, and for removing filth at least once in every twenty-four hours, and requiring them to be provided with a sufficient supply

of water, and they may impose pecuniary penalties on persons breaking such byelaws; provided that no such penalty exceed for any one offence the sum of five pounds, and in the case of a continuing nuisance the sum of ten shillings for every day during which such nuisance shall be continued after the conviction for the first offence.

CXXIX. The justices before whom any person is convicted of killing or dressing any cattle contrary to the provisions of this or the special Act, or of the non-observance of any of the byelaws or regulations made by virtue of this or the special Act, in addition to the penalty imposed on such person under the authority of this or the special Act, may suspend for any period not exceeding two months the license granted to such person under this or the special Act, or, in case such person be the owner or proprietor of any registered slaughter-house or knacker's yard, may forbid for any period not exceeding two months the slaughtering of cattle therein; and such justices, upon the conviction of any person for a second or other subsequent like offence, may, in addition to the penalty imposed under the authority of this or the special Act, declare the license granted under this or the special Act revoked, or if such person be the owner or proprietor of any registered slaughter-house, may forbid absolutely the slaughtering of cattle therein; and whenever the license of any such person is revoked as aforesaid, or whenever the slaughtering of cattle in any registered slaughter-house or knacker's yard is absolutely forbidden as aforesaid, the commissioners may refuse to grant any license whatever to the person whose license has been so revoked, or on account of whose default the slaughtering of cattle in any registered slaughter-house has been forbidden.

Justices may suspend license of slaughter-houses etc. in addition to penalty imposed.

CXXX. Every person who during the period for which any such license is suspended, or after the same is revoked as aforesaid, slaughters cattle in the slaughter-house or knacker's yard to which such license relates, or otherwise uses such slaughter-house or knacker's yard, or allows the same to be used as a slaughter-house or knacker's yard, and every person who during the period that the slaughtering of cattle in any such registered slaughter-house or knacker's yard is forbidden as aforesaid, or after such slaughtering has been absolutely forbidden therein, slaughters any cattle in any such registered slaughter-house, shall be liable to a penalty not exceeding five pounds for such offence; and a further penalty of five pounds for every day on which any such offence is committed after the conviction for the first offence.

Penalty for slaughtering cattle during suspension of license etc.

CXXXI. The inspector of nuisances, the officer of health, or any other officer appointed by the commissioners for that purpose, may at all reasonable times, with or without assistants, enter into and inspect any building or place whatsoever within the said limits kept or used for the sale of butcher's meat or for slaughtering cattle, and examine whether any cattle or the carcase of any such cattle is deposited there; and in case such officer shall find any cattle, or the carcase or part of the carcase of any beast, which

Officers may enter and inspect slaughter-houses etc.



appears unfit for the food of man, he may seize and carry the same before a justice, and such justice shall forthwith order the same to be further inspected and examined by competent persons; and in case, upon such inspection and examination, such cattle carcase or part of a carcase be found to be unfit for the food of man, such justice shall order the same to be immediately destroyed or otherwise disposed of in such way as to prevent the same being exposed for sale or used for the food of man; and such justice may adjudge the person to whom such cattle carcase or part of a carcase belongs, or in whose custody the same is found, to pay a penalty not exceeding ten pounds for every such animal or carcase or part of a carcase so found; and the owner or occupier of any building or place kept or used for the sale of butcher's meat or for slaughtering cattle, and every other person, who obstructs or hinders such inspector or other officer from entering into and inspecting the same, and examining seizing or carrying away any such animal or carcase or part of a carcase so appearing to be unfit for the food of man, shall be liable to a penalty not exceeding five pounds for each offence.

## TOWNS POLICE CLAUSES ACT 1847.

10 & 11 VICT., CAP. 89.

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### *Obstructions and Nuisances.*

And with respect to obstructions and nuisances in the streets, be it enacted as follows:

Power to prevent obstructions in the streets during public processions etc.

XXI. The commissioners may from time to time make orders for the route to be observed by all carts carriages horses and persons, and for preventing obstruction of the streets within the limits of the special Act, in all times of public processions rejoicings or illuminations, and in any case when the streets are thronged or liable to be obstructed, and may also give directions to the constables for keeping order and preventing any obstruction of the streets in the neighbourhood of theatres and other places of public resort; and every wilful breach of any such order shall be deemed a separate offence against this Act, and every person committing any such offence shall be liable to a penalty not exceeding forty shillings.

Power to regulate the route of persons driving stage carriages, etc. during divine service etc.

XXII. On application to the commissioners by the minister or churchwardens or chapelwardens of any church chapel or other place of public worship within the limits of the special Act, the commissioners may make orders for regulating the route by which persons shall drive any cart or carriage or cattle, or the manner in which they shall drive them, in the neighbourhood of such places of worship, during the hours of divine service on Sunday, Christmas Day, Good Friday, or any day appointed for a public fast or thanksgiving, and any orders so made shall be printed and put up on or near the church chapel or place of public worship to which the



same refer, and in some conspicuous places near and leading thereto, and elsewhere as the commissioners direct; and every wilful breach of any such order shall be deemed a separate offence against this Act, and every person committing any such offence shall be liable to a penalty not exceeding forty shillings.

XXIII. No proprietor of any stage carriage duly licensed to carry passengers for hire shall be liable to any penalty for any deviation from the route or line of route specified in his licence which the driver of such stage carriage makes in consequence of any regulation or direction made or given by the commissioners.

Proprietors of stage carriages deviating from route by order free from penalty.

XXIV. If any cattle be at any time found at large in any street within the limits of the special Act, without any person having the charge thereof, any constable or officer of police, or any person residing within the limits of the special Act, may seize and impound such cattle in any common pound within the said limits, or in such other place as the commissioners appoint for that purpose, and may detain the same therein until the owner thereof pay to the commissioners a penalty not exceeding forty shillings, besides the reasonable expenses of impounding and keeping such cattle.

Power to impound stray cattle.

XXV. If the said penalty and expenses be not paid within three days after such impounding, the pound-keeper, or other person appointed by the commissioners for that purpose, may proceed to sell or cause to be sold any such cattle; but previous to such sale seven days' notice thereof shall be given to or left at the dwelling-house or place of abode of the owner of such cattle, if he be known, or if not, then notice of such intended sale shall be given by advertisement, to be inserted seven days before such sale in some newspaper published or circulated within the limits of the special Act; and the money arising from such sale, after deducting the said sums, and the expenses aforesaid, and all other expenses attending the impounding, advertising, keeping, and sale of any such cattle so impounded, shall be paid to the commissioners, and shall be by them paid, on demand, to the owner of the cattle so sold.

Power to sell stray cattle for penalty and expenses.

XXVI. Every person who releases or attempts to release any cattle from any pound or place where the same are impounded under the authority of this or the special Act, or who pulls down damages or destroys the same pound or place, or any part thereof, with intent to procure the unlawful release of such cattle, shall, upon conviction of such offence before any two justices, be committed by them to some common gaol or house of correction for any time not exceeding three months.

Persons guilty of pound-breach to be committed for three months.

Power to  
provide a  
pound.

XXVII. The commissioners may purchase a piece of land within the limits of the special Act, for the purpose of a pound for stray animals, and may erect a pound thereon, and such pound when made shall be kept in repair by the commissioners.

Penalty  
on persons  
commit-  
ting any  
of the  
offences  
herein  
named.

XXVIII. Every person who in any street, to the obstruction, annoyance or danger of the residents or passengers, commits any of the following offences, shall be liable to a penalty not exceeding forty shillings for each offence, or, in the discretion of the justice before whom he is convicted, may be committed to prison, there to remain for a period not exceeding fourteen days; and any constable or other officer appointed by virtue of this or the special Act shall take into custody, without warrant, and forthwith convey before a justice, any person who within his view commits any such offence; (that is to say,)

Every person who exposes for show hire or sale (except in a market or market place or fair lawfully appointed for that purpose) any horse or other animal, or exhibits in a caravan or otherwise any show or public entertainment or shoes bleeds or farries any horse or animal (except in cases of accident), or cleans dresses exercises trains or breaks or turns loose any horse or animal, or makes or repairs any part of any cart or carriage (except in cases of accident where repair on the spot is necessary):

Every person who suffers to be at large any unmuzzled ferocious dog, or sets on or urges any dog or other animal to attack worry or put in fear any person or animal:

Every owner of any dog who suffers such dog to go at large, knowing or having reasonable ground for believing it to be in a rabid state, or to have been bitten by any dog or other animal in a rabid state:

Every person who, after public notice given by any justice directing dogs to be confined on account of suspicion of canine madness suffers any dog to be at large during the time specified in such notice:

Every person who slaughters or dresses any cattle, or any part thereof, except in the case of any cattle over-driven which may have met with any accident, and which for the public safety or other reasonable cause ought to be killed on the spot:

Every person having the care of any waggon cart or carriage, who rides on the shafts thereof, or who without having reins and holding the same, rides upon such waggon cart or carriage, or on any animal drawing the same, or who is at such a distance from such waggon cart or carriage as not to have due control over every animal drawing the same, or who does not, in meeting any other carriage, keep his waggon cart or carriage to the left or near side, or who in passing any

other carriage does nor keep his waggon cart or carriage on the right or off side of the road (except in cases of actual necessity, or some sufficient reason for deviation), or who by obstructing the street wilfully prevents any person or carriage from passing him, or any waggon cart or carriage under his care :

Every person who at one time drives more than two carts or waggons, and every person driving two carts or waggons who has not the halter of the horse in the last cart or waggon securely fastened to the back of the first cart or waggon, or has such halter of a greater length from such fastening to the horse's head than four feet :

Every person who rides or drives furiously any horse or carriage, or drives furiously any cattle :

Every person who causes any public carriage sledge truck or barrow, with or without horses, or any beast of burden, to stand longer than is necessary for loading or unloading goods, or for taking up or setting down passengers (except hackney carriages and horses and other beasts of draught or burthen, standing for hire in any place appointed for that purpose by the commissioners or other lawful authority), and every person who by means of any cart carriage sledge truck or barrow or any animal or other means, wilfully interrupts any public crossing, or wilfully causes any obstruction in any public footpath or other public thoroughfare :

Every person who causes any tree or timber or iron beam to be drawn in or upon any carriage, without having sufficient means of safely guiding the same :

Every person who leads or rides any horse or other animal, or draws or drives any cart or carriage sledge truck or barrow upon any footway of any street, or fastens any horse or other animal so that it stands across or upon any footway :

Every person who places or leaves any furniture goods wares or merchandise, or any cask tub basket pail or bucket, or places or uses any standing-place stool bench stall or show-board on any footway, or who places any blind shade covering awning or other projection over or along any such footway, unless such blind shade covering awning or other projection is eight feet in height at least in every part thereof from the ground :

Every person who places hangs up or otherwise exposes to sale any goods wares merchandise matter or thing whatsoever, so that the same project into or over any footway, or beyond the line of any house shop or building at which the same are so exposed, so as to obstruct or incommode the passage of any person over or along such footway :

Every person who rolls or carries any cask tub hoop or wheel, or any ladder plank pole timber or log of wood, upon any



- footway, except for the purpose of loading or unloading any cart or carriage, or of crossing the footway :
- Every person who places any line cord or pole across any street, or hangs or places any clothes thereon :
- Every common prostitute or nightwalker loitering and importuning passengers for the purpose of prostitution :
- Every person who wilfully and indecently exposes his person :
- Every person who publicly offers for sale or distribution, or exhibits to public view, any profane indecent or obscene book paper print drawing painting or representation, or sings any profane or obscene song or ballad, or uses any profane or obscene language :
- Every person who wantonly discharges any firearm, or throws or discharges any stone or other missile, or makes any bonfire, or throws or sets fire to any firework :
- Every person who wilfully and wantonly disturbs any inhabitant by pulling or ringing any door bell, or knocking at any door, or who wilfully and unlawfully extinguishes the light of any lamp.
- Every person who flies any kite, or who makes or uses any slide upon ice or snow :
- Every person who cleanses hoops fires washes or scalds any cask or tub, or hews saws bores or cuts any timber or stone, or slacks sifts or screens any lime :
- Every person who throws or lays down any stones coals slate shells lime bricks timber iron or other materials (except building materials so inclosed as to prevent mischief to passengers) :
- Every person who beats or shakes any carpet, rug, or mat (except door mats, beaten or shaken before the hour of eight in the morning) :
- Every person who fixes or places any flower-pot or box, or other heavy article, in any upper window, without sufficiently guarding the same against being blown down :
- Every person who throws from the roof or any part of any house or other building any slate brick wood rubbish or other thing, except snow thrown so as not to fall on any passenger :
- Every occupier of any house or other building or other person who orders or permits any person in his service to stand on the sill of any window, in order to clean paint or perform any other operation upon the outside of such window, or upon any house or other building within the said limits, unless such window be in the sunk or basement story :
- Every person who leaves open any vault or cellar, or the entrance from any street to any cellar or room underground, without a sufficient fence or handrail, or leaves defective the door window or other covering of any vault or cellar, or who



does not sufficiently fence any area pit or sewer left open, or who leaves such open area pit or sewer without a sufficient light after sunset to warn and prevent persons from falling thereinto :

Every person who throws or lays any dirt litter or ashes or nightsoil or any carrion fish offal or rubbish on any street, or causes any offensive matter to run from any manufactory brewery slaughter-house butcher's shop or dunghill into any street : Provided always, that it shall not be deemed an offence to lay sand or other materials in any street in time of frost, to prevent accidents, or litter or other suitable materials to prevent the freezing of water in pipes, or in case of sickness to prevent noise, if the party laying any such things causes them to be removed as soon as the occasion for them ceases :

Every person who keeps any pigstye to the front of any street, not being shut out from such street by a sufficient wall or fence, or who keeps any swine in or near any street, so as to be a common nuisance.

XXIX. Every person drunk in any street, and guilty of any riotous or indecent behaviour therein, and also every person guilty of any violent or indecent behaviour in any police office or any police station house within the limits of the special Act, shall be liable to a penalty not exceeding forty shillings for every such offence, or, in the discretion of the justice before whom he is convicted, to imprisonment for a period not exceeding seven days.

Penalty on drunken persons, &c. guilty of riotous or indecent behaviour.

*Fires.*

And with respect to fires, be it enacted as follows :

XXX. Every person who wilfully sets or causes to be set on fire any chimney within the limits of the special Act shall be liable to a penalty not exceeding five pounds : Provided always, that nothing herein contained shall exempt the person so setting or causing to be set on fire any chimney from liability to be indicted for felony.

Penalty for setting chimneys wilfully on fire.

XXXI. If any chimney accidentally catch or be on fire within the said limits, the person occupying or using the premises in which such chimney is situated shall be liable to a penalty not exceeding ten shillings : Provided always, that such forfeiture shall not be incurred if such person prove to the satisfaction of the justice before whom the case is heard that such fire was in nowise owing to omission neglect or carelessness of himself or servant.

Penalty for accidentally allowing chimneys to catch fire.

Fire engines and firemen may be provided by the commissioners.

XXXII. The commissioners may purchase or provide such engines for extinguishing fire, and such water buckets pipes and other appurtenances for such engines, and such fire escapes and other implements for safety or use in case of fire, and may purchase keep or hire such horses for drawing such engines as they think fit, and may build provide or hire places for keeping such engines with their appurtenances, and may employ a proper number of persons to act as firemen, and may make such rules for their regulation as they think proper, and give such firemen and other persons such salaries and such rewards for their exertions in cases of fire as they think fit.

Fire police permitted to go beyond the limits of the Act in certain cases.

XXXIII. The commissioners may send such engines, with their appurtenances, and the said firemen, beyond the limits of the special Act, for extinguishing fire in the neighbourhood of the said limits; and the owner of the lands or buildings where such fire shall have happened shall in such case defray the actual expense which may be thereby incurred, and shall also pay to the commissioners a reasonable charge for the use of such engines, with their appurtenances, and for the attendance of such firemen; and in case of any difference between the commissioners and the owner of the said lands or buildings, the amount of the said expenses and charge, as well as the propriety of sending the said engines and firemen as aforesaid for extinguishing such fire, (if the propriety thereof be disputed,) shall be determined by two justices, whose decision shall be final; and the amount of the said expenses and charge shall be recovered by the commissioners as damages.

#### *Places of Public Resort.*

And with respect to places of public resort, be it enacted as follows:

Penalty on victuallers harbouring constables while on duty.

XXXIV. Every victualler or keeper of any public house, or person licensed to sell wine spirits beer cider or other fermented or distilled liquors by retail, to be drunk or consumed on the premises, within the limits of the special Act, who knowingly harbours or entertains or suffers to remain in his public house or place wherein he carries on his business any constable during any part of the time appointed for his being on duty, unless for the purpose of quelling any disturbance or restoring order, shall for every such offence, be liable to a penalty not exceeding twenty shillings.

Penalty on coffee shop keepers harbouring disorderly persons.

XXXV. Every person keeping any house shop room or other place of public resort within the limits of the special Act for the sale or consumption of refreshments of any kind who knowingly suffers common prostitutes or reputed thieves to assemble at and

continue in his premises shall, for every such offence, be liable to a penalty not exceeding five pounds.

XXXVI. Every person who within the limits of the special Act keeps or uses or acts in the management of any house room pit or other place for the purpose of fighting baiting or worrying any animals shall be liable to a penalty of not more than five pounds, or, in the discretion of the justices before whom he is convicted, to imprisonment, with or without hard labour, for a time not exceeding one month ; and the commissioners may by order in writing authorise the superintendent constable, with such constables as he thinks necessary, to enter any premises kept or used for any of the purposes aforesaid, and take into custody all persons found therein without lawful excuse ; and every person so found shall be liable to a penalty not exceeding five shillings, and a conviction for this offence shall not exempt the owner keeper or manager of any such house room pit or place from any penal consequence to which he is liable for the nuisance thereby occasioned.

Penalty on persons keeping places for bear-baiting, cock-fighting, etc.

### *Hackney Carriages.*

And with respect to hackney carriages, be it enacted as follows :

XXXVII. The commissioners may from time to time license to ply for hire within the prescribed distance, or if no distance is prescribed, within five miles from the general post office of the city town or place to which the special Act refers, (which in that case shall be deemed the prescribed distance,) such number of hackney coaches or carriages of any kind or description adapted to the carriage of persons as they think fit.

Hackney carriages to be licensed.

XXXVIII. Every wheeled carriage, whatever may be its form or construction, used in standing or plying for hire in any street within the prescribed distance, and every carriage standing upon any street within the prescribed distance, having thereon any numbered plate required by this or the special Act to be fixed upon a hackney carriage, or having thereon any plate resembling or intended to resemble any such plate as aforesaid, shall be deemed to be a hackney carriage within the meaning of this Act ; and in all proceedings at law or otherwise the term "hackney carriage" shall be sufficient to describe any such carriage : provided always, that no stage coach used for the purpose of standing or plying for passengers to be carried for hire at separate fares, and duly licensed for that purpose, and having thereon the proper numbered plates required by law to be placed on such stage coaches, shall be deemed to be a hackney carriage within the meaning of this Act.

What to be hackney carriages.

Fee to be  
paid for  
licence.

XXXIX. For every such licence there shall be paid to the clerk of the commissioners, or other person appointed by them to receive the same, such sum as the commissioners direct, not exceeding five shillings.

Persons  
applying  
for licence  
to sign a  
requisi-  
tion for  
same.

XL. Before any such licence is granted a requisition for the same in such form as the commissioners from time to time provide for that purpose shall be made and signed by the proprietor or one of the proprietors of the hackney carriage in respect of which such licence is applied for, and in every such requisition shall be truly stated the name and surname and place of abode of the person applying for such licence, and of every proprietor or part proprietor of such carriage, or person concerned, either solely or in partnership with any other person, in the keeping employing or letting to hire of such carriage; and any person who, on applying for such licence, states in such requisition the name of any person who is not a proprietor or part proprietor of such carriage, or who is not concerned as aforesaid in the keeping employing or letting to hire of such carriage, and also any person who wilfully omits to specify truly in such requisition as aforesaid the name of any person who is a proprietor or part proprietor of such carriage, or who is concerned as aforesaid in the keeping employing or letting to hire of such carriage, shall be liable to a penalty not exceeding ten pounds.

What shall  
be speci-  
fied in the  
licences.

XLI. In every such licence shall be specified the name and surname and place of abode of every person who is a proprietor or part proprietor of the hackney carriage in respect of which such licence is granted, or who is concerned, either solely or in partnership with any other person, in the keeping employing or letting to hire of any such carriage, and also the number of such licence which shall correspond with the number to be painted or marked on the plates to be fixed on such carriage, together with such other particulars as the commissioners think fit.

Licences  
to be re-  
gistered.

XLII. Every licence shall be made out by the clerk of the commissioners and duly entered in a book to be provided by him for that purpose, and in such book shall be contained columns or places for entries to be made of every offence committed by any proprietor or driver or person attending such carriage, and any person may at any reasonable time inspect such book without fee or reward.

Licence to  
be in force  
for one  
year only.

XLIII. Every licence so to be granted shall be under the common seal of the commissioners, if incorporated, or if not incorporated shall be signed by two or more of the commissioners, and shall not include more than one carriage so licensed, and shall be in force for one year only from the day of the date



of such licence, or until the next general licensing meeting, in case any general licensing day be appointed by the commissioners.

XLIV. So often as any person named in any such licence as the proprietor or one of the proprietors, or as being concerned either solely or in partnership with any person in the keeping employing or letting to hire of any such carriage, changes his place of abode, he shall, within seven days next after such change, give notice thereof in writing, signed by him, to the commissioners, specifying in such notice his new place of abode; and he shall at the same time produce such licence at the office of the commissioners, who shall, by their clerk or some other officer, endorse thereon and sign a memorandum specifying the particulars of such change; and any person named in any such licence as aforesaid as the proprietor or one of the proprietors of any hackney carriage, or as being concerned as aforesaid, who changes his place of abode, and neglects or wilfully omits to give notice of such change, or to produce such licence in order that such memorandum as aforesaid may be endorsed thereon within the time and in the manner limited and directed by this or the special Act, shall be liable to a penalty not exceeding forty shillings.

Notice to be given by proprietors of hackney carriages of any change of abode.

XLV. If the proprietor or part proprietor of any carriage, or any person so concerned as aforesaid, permits the same to be used as a hackney carriage plying for hire within the prescribed distance without having obtained a licence as aforesaid for such carriage, or during the time that such licence is suspended as herein-after provided, or if any person be found driving standing or plying for hire with any carriage within the prescribed distance, for which such licence as aforesaid has not been previously obtained, or without having the number of such carriage corresponding with the number of the licence openly displayed on such carriage, every such person so offending shall for every such offence be liable to a penalty not exceeding forty shillings.

Penalty for plying for hire without a licence.

XLVI. No person shall act as driver of any hackney carriage licensed in pursuance of this or the special Act to ply for hire within the prescribed distance without first obtaining a licence from the commissioners, which licence shall be registered by the clerk to the commissioners, and a fee of one shilling shall be paid for the same; and every such licence shall be in force until the same is revoked, except during the time that the same may be suspended as after mentioned.

Drivers not to act without first obtaining a licence.

XLVII. If any person acts as such driver as aforesaid without having obtained such licence or during the time that his licence is suspended, or if he lend or part with his licence, except to the proprietor of the hackney carriage, or if the proprietor of any such

Penalty on drivers acting without licence.

hackney carriage employ any person as the driver thereof who has not obtained such licence, or during the time that his licence is suspended as herein-after provided, every such driver and every such proprietor shall for every such offence respectively be liable to a penalty not exceeding twenty shillings.

Proprietor to retain licence of drivers when in his employ, and to produce the same when summoned.

Justices may endorse convictions upon licences.

Penalty on proprietors for neglect.

XLVIII. In every case in which the proprietor of any such hackney carriage permits or employs any licensed person to act as the driver thereof, such proprietor shall cause to be delivered to him, and shall retain in his possession, the licence of such driver while such driver remains in his employ; and in all cases of complaint, where the proprietor of a hackney carriage is summoned to attend before a justice, or to produce the driver, the proprietor so summoned shall also produce the licence of such driver, if he be then in his employ; and if any driver complained of be adjudged guilty of the offence alleged against him, such justice shall make an endorsement upon the licence of such driver, stating the nature of the offence and the amount of the penalty inflicted; and if any such proprietor neglect to have delivered to him, and to retain in his possession, the licence of any driver while such driver remains in his employ, or if he refuse or neglect to produce such licence as aforesaid, such proprietor shall for every such offence be liable to a penalty not exceeding forty shillings.

Proprietor to return licence to drivers when quitting his service if they behave well, if otherwise, proprietors to summon them.

Compensation in case of licence being improperly withheld.

XLIX. When any driver leaves the service of the proprietor by whom he is employed without having been guilty of any misconduct, such proprietor shall forthwith return to such driver the licence belonging to him; but if such driver have been guilty of any misconduct, the proprietor shall not return his licence, but shall give him notice of the complaint which he intends to prefer against him, and shall forthwith summon such driver to appear before any justice to answer the said complaint; and such justice, having the necessary parties before him, shall inquire into and determine the matter of complaint; and if upon inquiry it appear that the licence of such driver has been improperly withheld, such justice shall direct the immediate re-delivery of such licence, and award such sum of money as he thinks proper to be paid by such proprietor to such driver by way of compensation.

Licences to be suspended or revoked for misconduct.

L. The commissioners may, upon the conviction for the second time of the proprietor or driver of any such hackney carriage for any offence under the provisions of this or the special Act with respect to hackney carriages, or any byelaw made in pursuance thereof, suspend or revoke, as they deem right, the licence of any such proprietor or driver.

LI. No hackney carriage shall be used or employed or let to hire, or shall stand or ply for hire within the prescribed distance, unless the number of persons to be carried by such hackney carriage, in words at length, and in form following, (that is to say,) "To carry                      persons," be painted on a plate placed on some conspicuous place on the outside of such carriage, and in legible letters, so as to be clearly distinguishable from the colour of the ground whereon the same are painted, one inch in length, and of a proportionate breadth; and the driver of any such hackney carriage shall not be required to carry in or by such hackney carriage a greater number of persons than the number painted thereon.

Number of persons to be carried in a hackney carriage to be painted thereon.

LII. If the proprietor of any hackney carriage permit the same to be used employed or let to hire, or if any person stand or ply for hire with such carriage, without having the number of persons to be carried thereby painted and exhibited in manner aforesaid, or if the driver of any such hackney carriage refuse, when required by the hirer thereof, to carry in or by such hackney carriage the number of persons painted thereon, or any less number, every proprietor or driver so offending shall be liable to a penalty not exceeding forty shillings.

Penalty for neglect or for refusal to carry the prescribed number.

LIII. Any driver of a hackney carriage standing at any of the stands for hackney carriages appointed by the commissioners, or in any street, who refuses or neglects, without reasonable excuse, to drive such carriage to any place within the prescribed distance, or the distance to be appointed by any byelaw of the commissioners, not exceeding the prescribed distance, to which he is directed to drive by the person hiring or wishing to hire such carriage, shall for every such offence be liable to a penalty not exceeding forty shillings.

Penalty on driver for refusing to drive.

LIV. If the proprietor or driver of any such hackney carriage, or if any other person on his behalf, agree beforehand with any person hiring such hackney carriage to take for any job a sum less than the fare allowed by this or the special Act, or any byelaw made thereunder, such proprietor or driver shall be liable to a penalty not exceeding forty shillings if he exact or demand for such job more than the fare so agreed upon.

Penalty for demanding more than the sum agreed for, though less than the legal fare.

LV. No agreement whatever made with the driver, or with any person having or pretending to have the care of any such hackney carriage, for the payment of more than the fare allowed by any byelaw made under this or the special Act, shall be binding on the person making the same, and any such person may, notwithstanding such agreement, refuse, on discharging such hackney carriage, to pay any sum beyond the fare allowed as aforesaid, and if any person

Agreement to pay more than the legal fare not to be binding, and sum paid be-



yond the proper fare may be recovered back.

actually pay to the driver of any such hackney carriage, whether in pursuance of any such agreement or otherwise, any sum exceeding the fare to which such driver was entitled, the person paying the same shall be entitled, on complaint made against such driver before any justice of the peace, to recover back the sum paid beyond the proper fare, and moreover such driver shall be liable to a penalty for such exaction not exceeding the sum of forty shillings; and in default of the repayment by such driver of such excess of fare, or of payment of the said penalty, such justice shall forthwith commit such driver to prison, there to remain for any time not exceeding one month, unless the said excess of fare and the said penalty be sooner paid.

Driver to carry, under an agreement for a discretionary distance, the distance to which hirer is entitled for the fare.

LVI. If the proprietor or driver of any such hackney carriage, or if any other person on his behalf, agree with any person to carry in or by such hackney carriage persons not exceeding in number the number so painted on such carriage as aforesaid, for a distance to be in the discretion of such proprietor or driver, and for a sum agreed upon, such proprietor or driver shall be liable to a penalty not exceeding forty shillings if the distance which he carries such persons be under that to which they were entitled to be carried for the sum so agreed upon according to the fare allowed by this or the special Act, or any byelaw made in pursuance thereof.

Deposit to be made for carriages waiting.

LVII. When any hackney carriage is hired and taken to any place, and the driver thereof is required by the hirer there to wait with such hackney carriage, such driver may demand and receive from such hirer his fare for driving to such place, and also a sum equal to the fare of such carriage for the period, as a deposit over and above such fare, during which he is required to wait as aforesaid, or if no fare for time be fixed by the byelaws, then the sum of one shilling and sixpence for every half hour during which he is so required to wait, which deposit shall be accounted for by such driver when such hackney carriage is finally discharged by such hirer; and if any such driver who has received any such deposit as aforesaid refuses to wait as aforesaid, or goes away or permits such hackney carriage to be driven or taken away without the consent of such hirer, before the expiration of the time for which such deposit was made, or if such driver, on the final discharge of such hackney carriage, refuse duly to account for such deposit, every such driver so offending shall be liable to a penalty not exceeding forty shillings.

Penalty on the driver refusing to wait, or to account for the deposit.

Over-charge by hackney coachmen, etc., to be included

LVIII. Every proprietor or driver of any such hackney carriage who is convicted of taking as a fare a greater sum than is authorised by any byelaw made under this or the special Act shall be liable to a penalty not exceeding forty shillings, and such penalty may be recovered before one justice; and in the conviction of such pro-



prietor or driver an order may be included for payment of the sum so overcharged, over and above the penalty and costs; and such overcharge shall be returned to the party aggrieved, whose evidence shall be admissible in proof of the said offence.

in conviction, and returned to aggrieved party.

LIX. Any proprietor or driver of any such hackney carriage which is hired who permits or suffers any person to be carried in or upon or about such hackney carriage during such hire, without the express consent of the person hiring the same, shall be liable to a penalty not exceeding twenty shillings.

Penalty for permitting person to ride without consent of the hirer.

LX. No person authorised by the proprietor of any hackney carriage to act as driver of such carriage shall suffer any other person to act as driver of such carriage without the consent of the proprietor thereof, and no person, whether licensed or not, shall act as driver of any such carriage without the consent of the proprietor, and any person so suffering another person to act as driver, and any person so acting as driver without such consent as aforesaid, shall be liable to a penalty not exceeding forty shillings for every such offence.

No person to act as driver of any carriage without the consent of the proprietor.

LXI. If the driver or any other person having or pretending to have the care of any such hackney carriage be intoxicated while driving, or if any such driver or other person by wanton and furious driving, or by any other wilful misconduct, injure or endanger any person in his life limbs or property, he shall be liable to a penalty not exceeding five pounds, and in default of payment thereof the justice before whom he is convicted of such offence may commit him to prison, there to remain for any time not exceeding two months.

Penalty on drivers misbehaving.

LXII. If the driver of any such hackney carriage leave it in any street or at any place of public resort or entertainment, whether it be hired or not, without some one proper to take care of it, any constable may drive away such hackney carriage and deposit it, and the horse or horses harnessed thereto, at some neighbouring livery stable or other place of safe custody; and such driver shall be liable to a penalty not exceeding twenty shillings for such offence, and in default of payment of the said penalty upon conviction, and of the expenses of taking and keeping the said hackney carriage and horse or horses, the same, together with the harness belonging thereto, or any of them, shall be sold by order of the justice before whom such conviction is made, and after deducting from the produce of such sale the amount of the said penalty, and of all costs and expenses, as well of the proceedings before such justice as of the taking keeping and sale of the said hackney carriage, and of the said horse or horses and harness, the surplus (if any) of the said produce shall be paid to the proprietor of such hackney carriage.

Penalty for leaving carriages unattended at places of public resort.

Damage done by driver may be recovered from the proprietor.

LXIII. In every case in which any hurt or damage has been caused to any person or property as aforesaid by the driver of any carriage let to hire, the justice before whom such driver has been convicted may direct that the proprietor of such carriage shall pay such a sum not exceeding five pounds as appears to the justice a reasonable compensation for such hurt or damage; and every proprietor who pays any such compensation as aforesaid may recover the same from the driver, and such compensation shall be recoverable from such proprietor, and by him from such driver, as damages.

Improperly standing with carriage; refusing to give way to, or obstructing any other driver; or depriving him of his fare.

LXIV. Any driver of any hackney carriage who suffers the same to stand for hire across any street or alongside of any other hackney carriage, or who refuses to give way, if he conveniently can, to any other carriage, or who obstructs or hinders the driver of any other carriage in taking up or setting down any person into or from such other carriage, or who wrongfully in a forcible manner prevents or endeavours to prevent the driver of any other hackney carriage from being hired, shall be liable to a penalty not exceeding twenty shillings.

Justices empowered to award compensation to drivers for loss of time in attending to answer complaints not substantiated.

LXV. If the driver of any such hackney carriage be summoned or brought before any justice to answer any complaint or information touching or concerning any offence alleged to have been committed by such driver against the provisions of this or the special Act, or any byelaw made thereunder, and such complaint or information be afterwards withdrawn or quashed or dismissed, or if such driver be acquitted of the offence charged against him, the said justice, if he think fit, may order the complainant or informant to pay to the said driver such compensation for his loss of time in attending the said justice touching or concerning such complaint or information as to the said justice seems reasonable, and in default of payment of such compensation, the said justice may commit such complainant or informant to prison for any time not exceeding one month, unless the same shall be sooner paid.

Penalty for refusing to pay the fare.

LXVI. If any person refuse to pay on demand to any proprietor or driver of any hackney carriage the fare allowed by this or the special Act, or any byelaw made thereunder, such fare may, together with costs, be recovered before one justice as a penalty.

Penalty for damaging carriage.

LXVII. Any person using any hackney carriage plying under a licence granted by virtue of this or the special Act, who wilfully injures the same, shall for every such offence be liable to a penalty not exceeding five pounds, and shall also pay to the proprietor of such hackney carriage reasonable satisfaction for the damage sustained by the same; and such satisfaction shall be ascertained by

the justices before whom the conviction takes place, and shall be recovered by the same means as the penalty.

LXVIII. The commissioners may from time to time (subject to the restrictions of this and the special Act) make byelaws for all or any of the purposes following; (that is to say,)

Commissioners may make byelaws for regulating hackney carriages.

For regulating the conduct of the proprietors and drivers of hackney carriages plying within the prescribed distance in their several employments, and determining whether such drivers shall wear any and what badges, and for regulating the hours within which they may exercise their calling :

For regulating the manner in which the number of each carriage, corresponding with the number of its licence, shall be displayed :

For regulating the number of persons to be carried by such hackney carriages, and in what manner such number is to be shown on such carriage, and what number of horses or other animals is to draw the same, and the placing of check strings to the carriages, and the holding of the same by the driver, and how such hackney carriages are to be furnished or provided :

For fixing the stands of such hackney carriages and the distance to which they may be compelled to take passengers, not exceeding the prescribed distance :

For fixing the rates or fares, as well for time as distance, to be paid for such hackney carriages within the prescribed distance, and for securing the due publication of such fares :

For securing the safe custody and re-delivery of any property accidentally left in hackney carriages, and fixing the charges to be made in respect thereof.

### *Bathing.*

And with respect to public bathing, be it enacted as follows :

LXIX. Where any part of the sea-shore or strand of any river used as a public bathing-place is within the limits of the special Act the commissioners may make byelaws for the following purposes; (that is to say,)

Bathing machines.

For fixing the stands of bathing machines on the sea-shore or strand, and the limits within which persons of each sex shall be set down for bathing, and within which persons shall bathe :

For preventing any indecent exposure of the persons of the bathers :

For regulating the manner in which the bathing machines shall be used, and the charges to be made for the same :

For regulating the distance at which boats and vessels let to hire for the purpose of sailing or rowing for pleasure shall be kept from persons bathing within the prescribed limits.



## MARKETS AND FAIRS CLAUSES ACT 1847.

10 &amp; 11 VICT. c. 14.

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*Holding of Market, etc.*

And with respect to the holding of the market or fair, and the protection thereof, be it enacted as follows :

Before the market or fair shall be opened notice to be given by undertakers.

XII. Before the market or fair shall be opened for public use the undertakers shall give not less than ten days' notice of the time when the same will be opened, and such notice shall be given by the publication thereof in some newspaper circulating within the limits of the special Act, and by printed handbills posted on some conspicuous place within those limits.

Sales elsewhere than in markets prohibited under a penalty not exceeding 40s.

XIII. After the market place is opened for public use every person other than a licensed hawkers who shall sell or expose for sale in any place within the prescribed limits, except in his own dwelling place or shop, any articles in respect of which tolls are by the special Act authorised to be taken in the market, shall for every such offence be liable to a penalty not exceeding forty shillings.

Market days.

XIV. After the market place or place for fairs is opened for public use the undertakers shall hold markets and fairs therein on the prescribed days (if any), and on such other days as the undertakers shall appoint from time to time by any byelaw to be made in pursuance of this or the special Act.

Penalty for selling or exposing for sale unwholesome meat, etc.

XV. Every person who shall sell or expose for sale any unwholesome meat or provisions in the market or fair shall be liable to a penalty not exceeding five pounds for every such offence; and any inspector of provisions appointed by the undertakers may seize such unwholesome meat or provisions, and carry the same before a justice, and thereupon such proceedings shall be had as are hereinafter directed to be had in the case of any cattle or carcase seized in any slaughter-house and carried before a justice; and every person who shall obstruct or hinder the inspector of provisions from seizing or carrying away such unwholesome meat or provisions shall be liable to a penalty not exceeding five pounds for every such offence.

Penalty on obstructing inspector.

Penalty for obstructing market or fair keeper.

XVI. Every person who shall assault or obstruct any person appointed by the undertakers to superintend the market or fair, or to keep order therein, whilst in the execution of his duty, shall for every such offence be liable to a penalty not exceeding forty shillings.



*Weighing of Goods and Carts.*

And with respect to weighing goods and carts, be it enacted as follows :

XXI. The undertakers shall provide sufficient and proper weighing-houses or places for weighing or measuring the commodities sold in the market or fair, and shall keep therein proper weights and measures according to the standard weights and measures for the time being for weighing such commodities as aforesaid, and shall appoint proper persons to attend to the weighing or measuring such commodities at all times during which the market or fair is holden.

Under-takers to provide proper weights and measures for weighing commodities sold at markets and fairs.

XXII. Every person selling or offering for sale any articles in the market or fair shall, if required so to do by the buyer, cause the same to be weighed or measured by the weights and scales or measures provided by the undertakers ; and any such person who shall refuse, on demand, to cause such articles to be weighed or measured in manner aforesaid, shall be liable to a penalty not exceeding forty shillings.

Articles to be weighed if requested by the buyer.  
Penalty for refusal.

XXIII. Every person appointed by the undertakers to weigh or measure any articles sold in the market or fair who shall refuse or neglect to weigh or measure the same when required shall be liable to a penalty not exceeding forty shillings.

Penalty on persons appointed refusing to weigh.

XXIV. The undertakers shall provide sufficient and proper buildings or places for weighing carts in which goods are brought for sale within the market or fair or the prescribed limits, and shall keep therein machines and weights proper for that purpose, and shall from time to time appoint a person in every such building or place to afford the use of such machines to the public by weighing such carts with or without their loading, as may be required.

Under-takers to keep proper machines for weighing carts laden with goods.

XXV. The driver of every such cart shall, at the request of the buyer or seller of such goods, or his agent, take such cart, with or without the loading thereof, to the nearest of the said weighing machines, and shall permit the same to be weighed ; and if such cart be weighed with its load thereupon the driver shall, if required, take such cart after its load has been discharged to the weighing machine nearest to such place of discharge, and permit it to be re-weighed without such load ; and if any such driver shall for the purposes aforesaid be required to take such cart a greater distance than half a mile, including the going to and returning from such machines respectively, the owner of the cart shall be paid for every horse which shall be used in drawing such cart twopenee for the

Carts to be weighed at one of the machines erected by the undertakers.

first half-mile, and a like sum for every additional half-mile ; and such payment shall be made by the person requiring such cart to be weighed as aforesaid before the driver thereof shall be obliged to take it as aforesaid for the purpose of having it weighed.

Penalty on drivers for refusing to take carts to be weighed, etc.

XXVI. The driver of any such cart who shall not, upon being so requested as aforesaid, and having such payment made or tendered as aforesaid, take the same to such weighing machine as herein-before directed, or who shall refuse to assist in the weighing of the same, shall forfeit to the person requiring such cart to be weighed a sum not exceeding twenty shillings.

Penalties on drivers of carts, etc., committing frauds in weighing.

XXVII. Every driver of any such cart weighed at any weighing machine to be provided in pursuance of this or the special Act who shall commit any of the following offences shall be liable to a penalty not exceeding five pounds for each offence ; (that is to say,)

If he at the time of weighing any such cart knowingly have anything in or about the same other than the proper loading thereof :

If he alter any ticket denoting the weight of any such cart, or the loading of the same :

If he make or use, or be privy to making or using, any ticket falsely stating the weight of any such cart or the loading thereof :

If he, after the weighing of any such cart, with the loading thereof, remove any part of such loading, and afterwards dispose of or attempt to dispose of or represent the residue of such loading as being the full loading denoted by such ticket :

If he, between the time when the cart and the loading thereof have been so weighed and the time when such cart is weighed without such loading, change the wheels of such cart, or make any other change upon it after being required to allow such cart to be weighed without the loading thereof :

If he be guilty of any other fraudulent contrivance to misrepresent the weight of any such cart or of the loading thereof.

Penalty on buyers or sellers for committing frauds in weighing.

XXVIII. If the buyer or seller of any goods brought in any cart for sale within the market or fair, and which shall be required to be weighed as aforesaid, shall do anything to such cart or its loading whereby the true weight thereof respectively shall be altered before such weighing, he shall for every such offence be liable to a penalty not exceeding five pounds.

Penalties for frauds committed by the machine keeper.

XXIX. The person for the time being appointed to keep any weighing machine provided in pursuance of this or the special Act shall be liable to a penalty not exceeding five pounds in any of the following cases ; (that is to say,)

If he wilfully neglect, on application, duly to weigh any cart, with or without its loading, as the case may be, that is brought to the machine kept by him to be weighed :

If he do not fairly weigh every such cart, with or without loading, as the case may be :

If he do not deliver to the buyer or seller of any such loading, or to any person interested therein, on application, a ticket or account specifying the true weight of such cart, with or without such loading, as may be required :

If he give to the driver of any such cart a false ticket or account of the weight of such cart, with or without the loading thereof :

If he weigh any cart, with or without its loading, knowing that anything had been done to such cart or to the loading thereof to alter the true weight thereof respectively :

If he knowingly assist in or connive at any fraud concerning the weighing of any cart or the loading thereof, or make or connive at making any false representation of the weight of the same respectively.

XXX. Every person who shall knowingly act or assist in committing any fraud respecting the weighing or weight of any cart, or the loading thereof, in pursuance of this or the special Act, shall for every such offence be liable to a penalty not exceeding five pounds.

Penalty on other parties committing frauds as to weighing.

### *Tolls.*

And with respect to the stallages rents and tolls to be taken by the undertakers, be it enacted as follows :

XXXI. Unless it be otherwise provided by the special Act, the undertakers shall not demand or receive any stallage rent or toll until the market place or place for a fair or slaughter-house in respect of the use of which the same shall be demanded shall be completed and fit for the use of the persons resorting thereunto.

Tolls, etc., not to be demanded until market or fair completed.

XXXII. A certificate under the hand of any two justices shall be conclusive evidence that the same is completed and fit for public use as aforesaid ; and any such justices shall sign such certificate on proof being adduced to them that the market place or place for a fair or slaughter-house is so completed and fit for public use.

Certificate of two justices to be evidence that market or fair is completed

XXXIII. The several stallages rents or tolls payable in respect of the market or fair or slaughter-house shall be paid from time to time on demand to the undertakers or the collector, or other person authorised by the undertakers to receive the same.

Stallages, etc., when to be paid.



Tolls to be paid to persons authorised before the same are weighed, etc.

XXXIV. The tolls payable in respect of weighing or measuring marketable commodities, or earts with or without goods, shall be paid to the person authorised by the undertakers to weigh or measure the same by the persons bringing such marketable commodities or earts to be weighed or measured, before the same are weighed or measured.

Tolls in respect of cattle market, when due.

XXXV. The tolls in respect of eattle brought to the market for sale shall beeome due as soon as the eattle in respect whereof they are demandable are brought into the market plaee, and before the eattle are put into any pen, or tied up in such market plaee ; and if the eattle be not removed within one hour after the elose of the market, another toll shall beeome due in respect of the eattle so omitted to be removed.

Stallages, tolls, etc., may be varied from time to time.

XXXVI. The undertakers may from time to time ehange the stallages rents and tolls to be taken in respect of the market or fair or for the slaughter-houses, or for weighing and measuring, provided that the stallages rents and tolls in no ease exceed the amounts authorised by the speeial Aet.

Penalty on taking a greater toll than authorised by this or the speeial Aet.

XXXVII. Every person who shall demand or reeeive a greater toll than that authorised to be taken under the provisions of this or the speeial Aet shall for every such offence be liable to a penalty not exceeding forty shillings.

Recovery of tolls by distress, etc.

XXXVIII. If any person liable to the payment of any stallage rent or toll authorised by this or the speeial Aet to be taken do not pay the same when demanded, the undertakers or their lessee, or any person authorised by the undertakers or their lessee to eollect the same, may levy the same in England or Ireland by distress, and in Seotland by poinding and sale, of all or any of the eattle or other arteies in respect of which such stallage rent or toll is payable, or of any other eattle or other arteies in the market belonging to the person liable to pay such stallage rent or toll, or under his eharge, or such tolls may be reeovered in any eourt having eompetent jurisdiction.

Disputes respecting tolls, how to be settled.

XXXIX. If any dispute arise concerning any such stallage rent or toll such dispute shall be determined in England or Ireland by a justiee, and in Seotland by the sheriff, and such justiee or sheriff shall on applieation made to him determine the same, and make such order therein, and award such eosts to either party, as to him shall seem proper ; and in default of payment on demand of the money which shall be so awarded, and of the eosts, the same shall be forthwith levied in England or Ireland by distress, and in Seotland by poinding and sale, and the justiee or sheriff shall issue his warrant aeordingly.



XL. Every person who shall assault or obstruct any person authorised to collect any stallage rent or toll authorised by this or the special Act shall for every such offence be liable to a penalty not exceeding forty shillings.

Penalty for obstructing collector of rents, etc.

XLI. The undertakers or their lessee shall from time to time cause to be painted on boards, or to be printed and attached to boards, in large and legible characters, a list of the several stallages rents and tolls from time to time payable under this and the special Act, and shall cause a board containing such list to be conspicuously set up and continued in the market or fair and in each weighing-house and slaughter-house provided by the undertakers to which each such list shall relate, and no stallage rent or toll shall be payable during the time such list is not so set up, or for any thing not specified therein : provided always, that if such lists be destroyed injured or obliterated the stallages rents and tolls shall continue to be payable during such time as shall be reasonably required for the restoration of such list in the same manner as if such list had continued in the state required by this Act.

List of tolls, etc., to be set up and placed in conspicuous places.



APPENDIX I.

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POOR LAW AUDIT CLAUSES.





## POOR LAW AUDIT CLAUSES.

(See Section 248 of the Act *supra*, p. 174.)

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7 & 8 VICT. c. 101.

An Act for the further amendment of the Laws relating to the Poor in England.

[9th August 1844.]

Section XXXII., after providing for the combination of parishes and unions into audit districts and the election of district auditors,<sup>a</sup> enacts that:—

Every auditor appointed for such a district shall have full powers to examine audit allow or disallow of accounts and of items therein, relating to monies assessed for and applicable to the relief of the poor of all parishes and unions within his district, and to all other money applicable to such relief; and such auditor shall charge in every account audited by him the amount of any deficiency or loss incurred by the negligence or misconduct of any person accounting, or of any sum for which any such person is accountable, but not brought by him into account against such person, and shall certify on the face of every account audited by him any money books deeds papers goods or chattels found by him to be due from any person; and when any such auditor has so certified any money books deeds papers goods or chattels to be due from any person, he shall forthwith report the same to the Local Government Board<sup>b</sup>; and the person from whom any money is so certified to be due shall within seven days pay or cause to be paid such money to the treasurer of the guardians of the union or parish, if there be any such treasurer; [and in the case of a union such money shall be applied by the guardians to the use of all or any of the parishes

Powers  
and duties  
of  
auditors.

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<sup>a</sup> The provision as to the election of district auditors was repealed by 31 & 32 Vict. c. 122, s. 24. See that section *infra*, p. 318.

<sup>b</sup> 34 & 35 Vict. c. 70.

included in such union, according as all or any of such parishes may be interested in the sum so paid ;] and all books deeds papers goods and chattels, and in the case where there is no treasurer as aforesaid all monies so certified to be due, shall be delivered over or paid, within seven days of the same being certified, to the person or persons authorized to receive the same ; and if any such money books deeds papers goods or chattels be not duly paid or delivered over as herein-before directed, the said auditor, or any auditor subsequently appointed, shall proceed as soon as may be to enforce the payment or delivering over of the same ; and all monies so certified to be due by such auditor shall be recoverable as so certified from all or any of the persons making or authorizing the illegal payment, or otherwise answerable for such monies, and shall be recovered on the application of such auditor, or of any such auditor subsequently appointed, or by any person for the time being entitled or authorized to receive the same in the same manner as penalties and forfeitures may be recovered under the provisions of the said first recited Act (4 and 5 W. IV. c. 76) ; [and the expenses attending such proceeding or recovery shall (except so far as the same may be paid by the person against whom the proceedings have been taken) be repaid to such auditor by the guardians of the parish or union, or by the district board of the district to which the proceedings may respectively relate, and shall be charged in their accounts in such manner and in such proportions as the Local Government Board may direct ;] and if any person from whom any such books deeds papers goods or chattels may be due, neglect or refuse to deliver over the same to the person for the time being entitled or authorized to receive the same, the person so neglecting or refusing shall be liable, on the complaint of any such auditor for the time being, or of the person entitled or authorized to receive the same, to the penalties and proceedings provided in the case of overseers refusing or neglecting to pay and deliver over to their successors any sum or sums of money goods chattels and other things in their hands ; [and any churchwarden surveyor of the highways overseer or other officer of a parish or union, who shall wilfully authorize or make an illegal or fraudulent payment from the church rate, highway rate, or other public fund of a parish or union, or shall unlawfully make any entry in his accounts for the purpose of defraying or making up to himself or any other person the whole or any part of any sum of money unlawfully expended from the poor rate, or disallowed or surcharged in the accounts of any parish or union by such auditor, shall, upon conviction thereof before any two justices, forfeit and pay for every such offence any sum not exceeding twenty pounds, and also treble the amount of such payment or of the sum so entered in his accounts.]

XXXIII. After making certain enactments which apply only to overseers enacts that :—

It shall be lawful for any such auditor to require any person holding or accountable for any money books deeds papers goods or chattels relating to the poor's rate or the relief of the poor, to produce to such auditor his accounts and vouchers, and to make or sign a declaration with respect to such accounts; and so often as such person neglects or refuses to attend, either at the audit or any adjournment thereof, when so required by such auditor, or to produce to him such accounts or vouchers, or any of them, or to make or sign a declaration with respect to his accounts, if thereunto required by such auditor, he shall be liable for every such refusal or neglect to forfeit forty shillings, to be recovered as penalties and forfeitures under the said first-recited Act, or if he wilfully make or sign a false declaration in respect of such accounts he shall be liable to the penalties of perjury.

XXXIV. (Balances found due before the passing of this Act may be discharged.)

XXXV. And be it enacted, that if any person aggrieved by any allowance disallowance or surcharge by any such auditor require such auditor to state the reasons for the said allowance disallowance or surcharge, the auditor shall state such reasons in writing in the book of account in which the allowance disallowance or surcharge may be made.

Certiorari  
for  
auditors'  
allow-  
ances or  
disallow-  
ances.

And it shall be lawful for every person aggrieved by such allowance, and for every person aggrieved by such disallowance or surcharge, if such last-mentioned person have first paid or delivered over to any person authorized to receive the same all such moneys goods and chattels as are admitted by his account to be due from him or remaining in his hands, to apply to the Court of Queen's Bench for a writ of certiorari to remove into the said Court the said allowance disallowance or surcharge in the like manner and subject to the like conditions as are provided in respect of persons suing forth writs of certiorari for the removal of orders of justices of the peace, except that the condition of such recognizance shall be to prosecute such certiorari at the costs and charges of such person, without any wilful or affected delay; and if such allowance disallowance or surcharge be confirmed, to pay to such auditor or his successor within one month after the same may be confirmed, his full costs and charges, to be taxed according to the course of the said court, and except that the notice of the intended application, which shall contain a statement of the matter complained of, shall be given to such auditor or his successor, who shall in return to such writ return a copy under his hand of the entry or entries in such book of account to which such notice shall refer, and shall appear before the said Court, and defend the allowance disallowance or surcharge so impeached in the said Court, and shall be reimbursed all such costs and charges as he may incur in such defence out of the poor rates of the union or parish respectively interested in

the decision of the question, unless the said Court make any order to the contrary; and that on the removal of such allowance disallowance or surcharge the said Court shall decide the particular matter of complaint set forth in such statement and no other.

And if it appear to such Court that the decision of the said auditor was erroneous, they shall by rule of the Court order such sum of money as may have been improperly allowed disallowed or surcharged to be paid to the party entitled thereto by the party who ought to repay or discharge the same; and they may also, if they see fit, by rule of the Court order the costs of the person prosecuting such certiorari to be paid by the parish or union to which such accounts relate, as to such Court may seem fit; which rules of Court respectively shall be enforced in like manner as other rules of the said Court are enforceable.

Persons  
aggrieved  
may apply  
to the  
Local Go-  
vernment  
Board,  
who may  
issue  
orders  
thereupon.

XXXVI. Provided always, and be it enacted, that it shall be lawful for any person aggrieved as aforesaid by any allowance disallowance or surcharge, in lieu of making application to the Court of Queen's Bench for a writ of certiorari, to apply to the Local Government Board<sup>a</sup> to inquire into and to decide upon the lawfulness of the reasons stated by the auditor for such allowance disallowance or surcharge, and it shall thereupon be lawful for the said Board to issue such order therein, under their seal, as they may deem requisite for determining the question.

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<sup>a</sup> 34 & 35 Vict. c. 70.



## 11 &amp; 12 VICT. c. 91.

An Act to make provision for the payment of Parish Debts, the Audit of Parochial and Union Accounts, and the allowance of certain charges therein.

[31st August 1848.]

\* \* \* \* \*

Section IV. And be it enacted that where any appeal shall be made to the Local Government Board <sup>a</sup> against any allowance disallowance or surcharge made by any auditor in the accounts of any guardians overseers or their officers, it shall be lawful for the said Board to decide the same according to the merits of the case ; and if they shall find that any disallowance or surcharge shall have been or shall be lawfully made, but that the subject-matter thereof was incurred under such circumstances as make it fair and equitable that the disallowance or surcharge should be remitted they may, by an order *under their seal*, <sup>b</sup> direct that the same shall be remitted upon payment of the costs (if any) which may have been incurred by the auditor or other competent authority in the enforcing of such disallowance or surcharge.

Appeal against disallowances and surcharges may be determined by the Local Government Board on the merits, and such disallowances etc. may be remitted in certain cases.

V. And whereas doubts exist as to the powers and duties of auditors in certifying the sums due from the overseers and other officers, and it is desirable to remove such doubts : Be it therefore enacted, that where any overseer or officer shall be continuing in office at the time when the accounts are audited, the auditor shall certify as due such sums of money only as shall be disallowed or surcharged by him in the accounts so audited ; but where the term of office of such overseer or officer shall have expired at the time when the accounts are audited, he shall ascertain the balance which he shall find to be then due on the accounts so audited, together with the sums (if any) which he shall have disallowed or sureharged, and shall give credit for all sums which shall be proved before him to have been paid in respect of such balance to the succeeding overseers or officers, or otherwise lawfully applied on behalf of the parish or union interested therein before the date of his audit, and he shall certify report and recover in the manner provided by law the balance remaining due after such credit shall have been given ; and every certificate made by any auditor, if made according to the forms set forth in the schedule hereunto annexed or to the like effect, shall be

Mode of certifying as to balances to officers.

<sup>a</sup> 34 & 35 Vict. c. 70.

<sup>b</sup> The order need not now be under seal. 29 & 30 Viet., c. 113, s. 5 *infra*, p. 317.

deemed to be sufficient: Provided always that where the sum or the aggregate of the sums disallowed by the auditor in the account of any officer shall not amount to forty shillings, the same may be paid over with the balance due from such officer, instead of being paid to the treasurer.

\* \* \* \* \*

Notice of  
audit to  
be adver-  
tised.

VII. And be it enacted, that in addition to the notices now required by law to be given by the auditor, he shall also give notice by advertisement in some newspaper circulating in the county wherein the union or the greater part of it, or in the case of a parish not comprised in a union wherein such parish shall be situated, a reasonable time prior to the holding of his audit; and the production of a copy of such newspaper shall in all courts and for all purposes be deemed sufficient evidence of the notice of the audit; and except where a party not being an officer bound to account to the auditor shall be surcharged by such auditor, it shall not be necessary to prove that the audit of any accounts was adjourned and that notice of any such adjourned audit was given.

As to pro-  
ceedings  
necessary  
to be taken  
against  
persons  
now liable  
to be sur-  
charged  
by auditor,  
and to  
whom no  
notice is  
required  
to be  
given.

VIII. And be it enacted, that if an auditor shall see cause to surcharge any person now liable by law to be surcharged by him, and to whom no notice is now required by law to be given, with any sum of money in reference to any payment considered by him to have been illegally or improperly made, he shall if the person be not present at such audit, cause notice in writing of his intention to make such surcharge to be given, by post or otherwise, to the person against whom he shall propose to make this surcharge, addressed to him at his last known place of abode, and shall adjourn the audit, so far as it shall relate to such particular matter, for a sufficient time to allow of such person appearing before him and showing cause against such surcharge, and at such time the said auditor shall hear the party (if present) and determine according to the law and justice of the case.

What shall  
be re-  
quired to  
be proved  
by  
auditors in  
order to  
recover  
sums cer-  
tified by  
them to  
be due.

IX. And be it enacted, that in any proceedings to be taken by an auditor or by his attorney before justices to recover sums certified by him to be due, it shall be sufficient for him to produce a certificate of his appointment under the seal of the Local Government Board<sup>a</sup> and to state and prove that the audit was held, that the certificate was made in the book of account of the union or parish to which the same relates, and that the sum certified to be due had not been paid to the treasurer of the guardians of the union, or of the parish as the case may require, within seven days after the same had been so certified, nor within three clear days before the laying of the information, of which nonpay-

<sup>a</sup> 34 & 35 Viet. c. 70.

ment a certificate in writing purporting to be signed by the treasurer shall be sufficient proof on the part of the auditor; and if at the hearing of such information it shall be proved that the said sum had been paid to the treasurer subsequently to the date of such last-mentioned certificate, the costs incurred by such auditor shall be paid by the party against whom the information shall be laid, unless he prove that notice of such payment had been given to the auditor twenty-four hours at least prior to the laying of the information.

X. And be it enacted, that the Local Government Board<sup>a</sup> may at any time, upon sufficient cause being shown to them, authorize any person selected by the auditor to act temporarily as his deputy, and shall communicate to the several unions and places forming his district the name of the person so appointed to act as his deputy, and such person shall thereupon be empowered to act in all respects and with the same authorities and subject to the same duties and liabilities as the auditor himself is entitled or subject to.

Auditor  
may, upon  
cause  
being  
shown,  
appoint a  
deputy.

## SCHEDULE to which this Act refers.

### FORMS OF CERTIFICATES.

#### 1.—*Against an accounting Officer.*

I do hereby certify, that in the account of *A. B.*, the [set out the name of the office] of the parish of [or of the union], I have disallowed [or surcharged] the sum of

As witness my hand, this                      day of                      18

*M. N.*, Auditor of the  
district which comprises the above-  
named parish or union.

#### 2.—*Against a Person not an accounting Officer.*

I do hereby certify, that in the accounts of the                      union [or of the parish of                      ] I have disallowed the sum of £                      as a payment illegally made out of the funds of such union [or parish] and I find that *C. D.* of                      authorized the making of such illegal payment, and I do hereby surcharge the same *C. D.* with the same.

As witness my hand this                      day of                      18

*M. N.*, Auditor of the  
district which comprises the above-  
named union or parish.

<sup>a</sup> 34 & 35 Vict., c. 70.

12 &amp; 13 VICT. c. 103.

An Act to continue an Act of the last Session of Parliament for charging the maintenance of certain poor persons in unions upon the common fund, and to make certain amendments in the laws for the relief of the poor.

[1st August 1849.]

\* \* \* \* \*

On vacancy in the office of auditor, Local Government Board to appoint a temporary auditor to audit accounts incomplete.

Section VIII. And be it enacted, that when any auditor shall die resign or be removed or become incompetent to act, at any time when the audit of the accounts of the parishes or unions within his district shall not be completed, the Local Government Board<sup>a</sup> may, by order under their seal, appoint temporarily some other person to audit the accounts of the several parishes or unions which may then be ready to be audited; and such temporary auditor shall have the same powers and authorities and shall be subject to the same obligations and duties as the ordinary auditor would have possessed or would have been subject to, and shall receive such remuneration as the Local Government Board<sup>a</sup> shall direct for the performance of his services herein.

Certain limitation in 11 & 12 Viet. c. 43 not to apply to proceedings by auditors.

IX. And whereas in the Act of the last Session of Parliament, intituled "An Act to facilitate the performance of the duties of Justices of the Peace out of Sessions within England and Wales with respect to summary convictions and orders," it is enacted, that in all cases where no time had then been or should thereafter be specially limited for making the complaints or laying the information therein referred to, every such complaint should be made and every such information laid within six calendar months from the time when the matter of such complaint or information respectively arose; and doubts have been entertained whether the provision aforesaid applies to proceedings by auditors to recover sums certified by them to be due in the accounts of officers or other persons, and it is desirable to remove such doubts: Be it therefore declared and enacted, that nothing in the provision of the said Act herein recited shall be deemed to apply to any such proceeding by an auditor, but that no auditor shall commence any such proceeding after the lapse of nine calendar months from the disallowance or surcharge by such auditor, or in the event of an application by way of appeal against the same to the Court of Queen's Bench or to the Local Government Board<sup>a</sup> after the lapse of nine calendar months from the determination thereupon.

\* \* \* \* \*

<sup>a</sup> 34 & 35 Viet., c. 70.



XI. And be it enacted, that where any auditor shall lay any information for a penalty in consequence of the default of any officer or other person to attend the audit or the adjournment thereof, or to produce the proper account or vouchers, or to make or sign the proper declaration before him, the costs incurred by such auditor when not recovered from the defendant in such information shall, if the Local Government Board<sup>a</sup> consent thereto, be payable to such auditor, and be chargeable in like manner as the costs incurred by an auditor in enforcing the payment of sums certified by him to be due.

Auditors may recover costs of proceedings to enforce due attendance at the audit.

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29 & 30 VICT. c. 113.

An Act to amend the Act providing superannuation allowances to officers of unions and parishes, and to make other amendments in the laws relating to the relief of the poor.

[10th August 1866.]

\* \* \* \* \*

Section V. So much of the fourth section of the statute of the eleventh and twelfth years of the reign of Her Majesty, chapter ninety-one, as requires the Poor Law Board to issue an order under their seal in cases where they direct any surcharge or disallowance made by an auditor to be remitted, shall be repealed; and such direction, if given in writing under the hand of the president of the said Board<sup>a</sup>, and countersigned by a secretary or assistant secretary, shall have the same effect as if such direction were given by such an order as aforesaid.

Remission of surcharges and disallowances need not be made by order under seal.

VI. When the Local Government Board<sup>a</sup> shall require an auditor to hold an extraordinary audit of the accounts of any guardians or overseers, or of any officer, whether still continuing or upon his resignation

Effect of extraordinary audit.

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<sup>a</sup> 34 & 35 Vict. c. 70.

or removal from office, such audit shall be deemed to be an audit within the meaning of the several Acts relating to the audit of the accounts of the poor rate, and may be held after three days' notice thereof given in the usual manner.

Auditor  
em-  
powered  
to inspect  
books at  
any time.

VII. The auditor who shall be authorized to audit the accounts of any guardians overseers or officers may at any time, when authorized or required by the Local Government Board<sup>a</sup> so to do, inspect the accounts and books of account of any guardians overseer or any officer liable to account to him; and any such guardian overseer or officer who shall thereupon refuse to allow him to inspect the same, or shall obstruct him in such inspection, or shall conceal any such account or book for the purpose of preventing such inspection, shall forfeit a sum not exceeding five pounds, to be recovered as a penalty under the statute of the fourth and fifth of King William the Fourth, chapter seventy-six, and to be applied to the use of the parish or union for which such guardian overseer or officer respectively shall act.

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31 & 32 VICT., CAP. 122.

An Act to make further amendments in the laws for the relief of the poor in England and Wales.

[31st July 1868.]

\* \* \* \* \*

Local Go-  
vernment  
Board to  
appoint  
auditors.

Section XXIV. So much of the Poor Law Amendment Act 1844, section thirty-two,<sup>b</sup> as provides for the election of district auditors, shall be repealed; and whenever the office of an auditor appointed or to be appointed under the authority of the said Act shall, after the passing of this Act, become vacant, or whenever an auditor shall be ordered to be appointed for any district or parish under the authority of the said Act

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<sup>a</sup> 34 & 35 Vict. c. 70.

<sup>b</sup> See p. 309.

or of the Poor Law Amendment Act 1834, the Local Government Board<sup>a</sup> may, by order under their seal, appoint a person to be auditor of such district (or any part thereof) or of such parish; and the said person so appointed shall have all the powers and privileges, and shall do all the matters and things, which the auditors of districts under any Act of Her Majesty have or are required or empowered to do; and the provisions contained in the Poor Law Board Act 1847, relative to the salaries of the persons therein mentioned, shall apply to the salaries of the persons to be appointed as auditors by the Local Government Board<sup>a</sup> provided that before such auditor shall be empowered to act a notice of his appointment shall be inserted in the *London Gazette*, and no further or other notice or proof of such appointment shall be required.

Notice of  
appoint-  
ment of  
auditor to  
be inserted  
in *London  
Gazette*.

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<sup>a</sup> 34 & 35 Vict., c. 70.





## APPENDIX II.

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### MISCELLANEOUS STATUTES.

MISCELLANEOUS STATUTES REFERRED TO IN OR RELATING  
TO THE PURPOSES OF THE PUBLIC HEALTH ACT 1875.

Baths and Wash-houses Acts . . . . .	{ 9 & 10 Vict. c. 74.
	{ 10 & 11 Vict. c. 61.
Dakchouse Regulation Act 1863 . . . . .	26 & 27 Vict. c. 40.
Artizans' and Labourers' Dwellings Act 1868 . . . .	31 & 32 Vict. c. 130.
Gas and Waterworks Facilities Act 1870 . . . . .	33 & 34 Vict. c. 70.
„ „ „ Amendment Act 1873 . . . . .	36 & 37 Vict. c. 89.
Municipal Corporation (Borough Funds) Act . . . .	35 & 36 Vict. c. 91.
Artizans' and Labourers' Dwellings Improvement Act 1875. . . . .	38 & 39 Vict. c. 36.
Sale of Food and Drugs Act 1875 . . . . .	38 & 39 Vict. c. 63.
Local Loans Act 1875 . . . . .	38 & 39 Vict. c. 83.
Public Works Loans Act 1875 . . . . .	38 & 39 Vict. c. 89.

## MISCELLANEOUS STATUTES.

9 & 10 VICT. c. 74.

An Act to encourage the Establishment of Public Baths and Wash-houses.  
[26th August 1846.]

WHEREAS it is desirable for the health comfort and welfare of the inhabitants of towns and populous districts to encourage the establishment therein of public baths and wash-houses and open bathing-places: Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same, that this Act may be adopted for any incorporated borough in England which is regulated under an Act passed in the sixth year of the reign of His late Majesty, to provide for the regulation of municipal corporations, or any charter granted in pursuance of the said Act, or any Act passed for the amendment thereof, and also, with the approval of the Local Government Board<sup>a</sup> for any parish in England not within any such incorporated borough.

Act may be adopted in certain boroughs and parishes.

See section 10 of the Public Health Act 1875, *supra*, p. 50.

II. And be it enacted that in this Act the following words and expressions shall have the several meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction; that is to say,

Interpretation of Act.

“Parish” shall mean every place having separate overseers of the poor, and separately maintaining its own poor:

“Borough” shall mean city borough port cinque port or town corporate:

“Ratepayers” shall mean such of the persons for the time being assessed to and paying rates for the relief of the poor of the parish

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<sup>a</sup> 34 & 35 Vict. c. 70.

as for the time being shall be duly qualified to vote for the election of overseers for the parish :

“ Churchwardens ” shall mean also chapelwardens or other persons discharging the duties of churchwardens :

“ Overseers ” shall mean also any persons authorized and required to make and collect or cause to be collected the rate for the relief of the poor of the parish, and acting instead of overseers of the poor :

“ Vestry ” shall mean the inhabitants of the parish lawfully assembled in vestry, or for any of the purposes for which vestries are holden, except in those parishes in which there is a select vestry elected under an Act passed in the fifty-ninth year of the reign of King George the third, intituled An Act to amend the Laws for the Relief of the Poor, or elected under an Act passed in the second year of the reign of His late Majesty, intituled An Act for the Better Regulation of Vestries and for the Appointment of Auditors of Accounts in certain Parishes of England and Wales, or elected under the provisions of any local Act of Parliament for the government of any parish by vestries, in which parishes it shall mean such select vestry :

“ Commissioners ” shall mean the commissioners appointed in accordance with this Act for any parish, and for the time being in office and acting as such commissioners :

“ Clerk ” shall mean, as regards an incorporated borough, the town clerk of such borough ; and, as regards a parish, the clerk appointed pursuant to this Act by the commissioners :

“ Justice ” shall mean justice of the peace for the county riding division liberty borough or place where the matter requiring the cognizance of justices shall arise :

“ Lands ” shall mean lands tenements and hereditaments, of whatsoever nature or tenure :

Words importing the masculine gender shall include the feminine :

Words of the plural number shall include the singular, and words of the singular number shall include the plural.

59 G. III.  
c. 12.

1 & 2 W.  
IV. c. 60.

Council  
of any  
borough  
may adopt  
the provi-  
sions con-  
tained in  
this Act,  
if they  
think fit.

III. And be it enacted that the council of any such borough as aforesaid may if they think fit determine that this Act shall be adopted for such borough, and then and in such case such of the provisions of this Act as are applicable in that behalf shall thenceforth take effect and come into operation in such borough, and this Act shall be carried into execution in such borough in accordance with such provisions and the laws for the time being in force relating to the municipal corporation of such borough.

See s. 10 of the Public Health Act 1875, *supra*, p. 50.

Expenses  
of carry-  
ing this

IV. And be it enacted that the expenses of carrying this Act into execution in any such borough in which the council shall have resolved



to adopt this Act for their borough shall be chargeable upon and paid out of the borough fund, and for that purpose the council may levy with and as part of the borough rate, or by a separate rate to be assessed levied paid and recovered in like manner and with the like powers and remedies in all respects as the borough rate, such sums of money as shall be from time to time necessary for defraying such expenses, and shall apply the same accordingly as if the expense of carrying this Act into execution were an expense necessarily incurred in carrying into effect the provisions of the said Act of the sixth year of the reign of His late Majesty ; and the income arising from the baths and wash-houses and open bathing-places in any borough shall be paid to the credit of the borough fund thereof, and the council shall keep distinct accounts of their receipts payments credits and liabilities, with reference to the execution of this Act, to be called " The Public Baths and Wash-houses Account."

Act into execution shall be charged upon the borough fund, and income arising carried to same.

V. And be it enacted that upon the requisition in writing of ten or more rate-payers of any such parish as aforesaid, not being within any such incorporated borough, the churchwardens or other persons to whom it belongs to convene meetings of the vestry in such parish shall convene a meeting of the vestry for the special purpose of determining whether this Act shall be adopted for the parish, after public notice of such vestry and the place and hour of holding the same, and the special purpose thereof, given in the usual manner in which notice of the meetings of the vestry is given at least seven days before the day to be appointed for holding such vestry ; and if thereupon it shall be resolved by the vestry that this Act ought to be adopted for the parish, a copy of such resolution extracted from the minutes of the vestry, and signed by the chairman, shall be sent to the Local Government Board<sup>a</sup> for their approval, and as soon as such approval shall have been signified in writing, such of the provisions of this Act as are applicable in that behalf shall thenceforth take effect and come into operation in the parish : Provided always that no such resolution of the vestry shall be deemed to be carried unless two-thirds of the number of votes given on the question according to the usual manner of voting at such vestry shall have been given for such resolution.

On the requisition of ten rate-payers, churchwardens etc. to convene vestry meeting to determine whether this Act shall be adopted.

If vestry resolve to adopt the Act, a copy of resolution to be sent to Local Government Board.

No resolution deemed to be carried unless two thirds vote for it.

VI. And be it enacted that in such case the vestry shall appoint not less than three nor more than seven persons, being ratepayers of the parish, commissioners for carrying this Act into execution in the parish, of whom one-third, or as nearly as may be one-third (to be determined among themselves), shall go out of office yearly, but shall be eligible for immediate re-appointment.

Where Act adopted vestry to appoint commissioners for carrying the same into execution.

<sup>a</sup> 34 & 35 Vict. c. 70.

Resigna-  
tion of  
commis-  
sioners.

VII. And be it enacted that any commissioner may at any time resign his office as a commissioner on giving seven days' notice in writing of his intention to resign to the clerk, and also to the churchwardens.

Vacancies  
to be  
filled up  
by vestry.

VIII. And be it enacted that any vacancies in the commissionership may be filled up by the vestry when and as the vestry shall think fit.

Meetings  
of the  
commis-  
sioners.

IX. And be it enacted that the commissioners shall meet at least once in every calendar month at their office, or some other convenient place previously publicly notified.

Special  
meetings  
of com-  
mission-  
ers.

X. And be it enacted that the commissioners may meet at such other time as at any previous meeting shall be determined upon, and it shall be at all times competent for any one commissioner, by writing under his hand, to summon, with at least forty-eight hours' notice, the commissioners for any special purpose therein named, and to meet at such times as shall be therein named.

Quorum  
of meet-  
ings of  
commis-  
sioners.

XI. And be it enacted that at all meetings of the commissioners any number not less than one-third of the whole number when more than three commissioners shall have been appointed, and when only three commissioners shall have been appointed, then any number not less than two commissioners, shall be a sufficient number for transacting business and for exercising all the powers of the commissioners.

Commis-  
sioners  
may ap-  
point and  
remove  
officers,  
etc.

XII. And be it enacted that the commissioners shall appoint and may remove at pleasure a clerk and such other officers and servants as shall be necessary for effecting the purposes of this Act, and with the approval of the vestry may appoint reasonable salaries wages and allowances for such clerk officers and servants, and when necessary may hire and rent a sufficient office for holding their meetings and transacting their business, and may agree for and pay a reasonable rent for such office.

Minutes  
of pro-  
ceedings  
of  
commis-  
sioners to  
be entered  
in a book.

XIII. And be it enacted that all orders and proceedings of the commissioners shall be entered in books to be kept by them for that purpose, and shall be signed by the commissioners or any two of them; and all such orders and proceedings so entered and purporting to be so signed shall be deemed to be original orders and proceedings; and such books may be produced and read as evidence of all such orders and proceedings upon any appeal trial information or other proceeding, civil or criminal, and in any court of law or equity whatsoever.

Commis-  
sioners to  
keep  
accounts,  
which  
shall be  
open to

XIV. And be it enacted that the commissioners shall provide and keep books in which shall be entered true and regular accounts of all sums of money received and paid for or on account of the purposes of this Act in the parish, and of all liabilities incurred by them for such purposes, and of the several purposes for which such sums of money

shall have been paid and such liabilities shall have been incurred ; and such books shall at all reasonable times be open to the examination of every commissioner churchwarden overseer and ratepayer, without fee or reward, and they respectively may take copies of or extracts from such books, or any part thereof, without paying for the same ; and in case the commissioners, or any of them, or any of their officers or servants having the custody of the said books, being thereunto reasonably requested, shall refuse to permit or shall not permit any churchwarden overseer or ratepayer to examine the same, or take any such copy or extract, every commissioner officer or servant so offending shall for every such offence forfeit any sum not exceeding five pounds.

inspection.

Penalty for refusing to allow inspection.

XV. And be it enacted that the vestry shall yearly appoint two persons, not being commissioners, to be auditors of the accounts of the commissioners, and at such time in the month of March in every year after the adoption of this Act for the parish as the vestry shall appoint the commissioners shall produce to the auditors their accounts, with sufficient vouchers for all monies received and paid, and the auditors shall examine such accounts and vouchers, and report thereon to the vestry.

Auditors to be appointed yearly, who shall examine the accounts and report to vestries.

XVI. And be it enacted that the expenses of carrying this Act into execution in any parish not within any such incorporated borough to such amount as shall be from time to time sanctioned by the vestry shall be chargeable upon and paid out of the monies to be raised or applicable for the relief of the poor of the parish.

Expenses of executing Act in any parish to be paid out of the poor rate.

XVII. And be it enacted that for defraying the expenses which shall have been or shall be incurred in carrying this Act into execution in the parish the vestry may and shall from time to time order the overseers to levy with and as part of the rate for the relief of the poor of the parish such sums as the vestry shall deem necessary, and the amount thereof shall accordingly be assessed levied paid and recovered in like manner and with the like powers and remedies in all respects as such rate, and shall be paid by the overseers, according to the order of the vestry, to such person as shall be appointed by the commissioners to receive the same, and his receipt shall be a sufficient discharge to the overseers for the same, and shall be allowed accordingly in passing their accounts.

Overseers to levy, as part of the poor rate, such sums as vestry shall deem necessary to pay expenses.

XVIII. And be it enacted that the money raised for defraying the expenses of carrying this Act into execution, and the income arising from the baths and wash-houses and open bathing places in the parish, shall be applied by the commissioners in or toward defraying the expenses of carrying this Act into execution in the parish ; and whenever after repayment of all monies borrowed for the purpose of carrying this Act into execution in the parish, and the interest thereof, and after satisfying all

Monies raised, and the income arising from baths etc. in the parish, to be applied



towards  
defraying  
expenses.

the liabilities of the commissioners with reference to the execution of this Act in the parish, and providing such a balance as shall be deemed by the commissioners sufficient to meet their probable liabilities during the then next year, there shall be at the time of holding the meeting of the vestry at which the yearly report of the auditors shall be produced any surplus money at the disposal of the commissioners, they shall pay the same to the overseers in aid of the rate for the relief of the poor of the parish.

Vestries of  
two or  
more  
parishes  
may con-  
cur in  
carrying  
this Act  
into exe-  
cution,  
subject to  
the ap-  
proval of  
the Local  
Govern-  
ment  
Board.

XIX. And be it enacted that the vestries of any two or more neighbouring parishes which shall have respectively adopted this Act may concur in carrying this Act into execution in such parishes in such manner, not inconsistent with the provisions of this Act, and for such time as they shall mutually agree; and for that purpose it may, with the approval of the Local Government Board,<sup>a</sup> be agreed on between such vestries that any public baths and wash-houses and open bathing-places shall be erected and made in any one of such parishes, to be vested in the commissioners thereof, and that the expenses of carrying this Act into execution with reference to the same shall be borne by such parishes in such proportions as such vestries shall mutually agree, and the proportion for each of such parishes of such expenses shall be chargeable upon and paid out of the monies to be raised for the relief of the poor of the same respective parish accordingly; and, according and subject to the terms which shall have been so agreed on, the commissioners appointed for each of such parishes shall, in the management of the said baths and wash-houses and open bathing-places, form one body of commissioners, and shall act accordingly in the execution of this Act, and the accounts and vouchers of such commissioners shall be examined and reported on by the auditors of each of such parishes; and the surplus money at the disposal as aforesaid of such commissioners shall be paid to the overseers of such parishes respectively in the same proportions as those in which such parishes shall be liable to such expenses.

Incorpo-  
ration of  
commis-  
sioners.

XX. And for the more easy execution of the purposes of this Act, be it enacted that the commissioners of every such parish shall be a body corporate, with perpetual succession, which shall not be deemed to be interrupted by any partial or total vacancy from time to time in their office, by the name of "The Commissioners for the Public Baths and Wash-houses in the Parish of ( ) in the County of ( )," and by that name may sue and be sued in all courts and before all justices and others, and may have and use a common seal, and by that name take hold and convey any lands vested in them for the purposes of this Act.

<sup>a</sup> 34 & 35 Vict. c. 70.



XXI. And be it enacted that for carrying this Act into execution in any borough or parish respectively, the council, with the approval of the Local Government Board,<sup>a</sup> and the commissioners, with the sanction of the vestry, and also with the approval of the Local Government Board,<sup>a</sup> may from time to time borrow at interest, on the security of a mortgage, as the case may be, of the borough fund, or of the rates for the relief of the poor of the parish, the money which may be by them respectively required, and shall apply the monies so borrowed accordingly.

Councils, etc., may borrow money for the purposes of the Act, with the approval of the Local Government Board.

XXII. And be it enacted that the commissioners for carrying into execution an Act passed in the second session of the fifth year of the reign of Her Majesty, intituled "An Act to authorize the Advance of Money out of the Consolidated Fund to a limited Amount for carrying on Public Works and Fisheries and Employment of the Poor, and to amend the Acts authorizing the Issue of Exchequer Bills for the like purposes," may from time to time make to the council of any such borough, or commissioners of any such parish respectively, for the purposes of this Act, any loan under the provisions of the recited Act or the several Acts therein recited or referred to, upon security of the borough fund, or the rates for the relief of the poor of the parish, as the case may be.

The Public Works Loan Commissioners may advance money for the purposes of this Act.

See now the Public Works Loans Act 1875, *infra*.

XXIII. And be it enacted that the provisions of the Companies Clauses Consolidation Act 1845, with respect to the borrowing of money by any company on mortgage, and the provisions of the same Act with respect to the accountability of the officers of the company, and the provisions of the same Act with respect to the making of byelaws, subject to the provision hereinafter contained, and the provisions of the same Act with respect to the recovery of damages not specially provided for, and penalties, so far as such provisions may respectively be applicable to the purposes of this Act, shall be respectively incorporated with this Act; and the expressions in such provisions applicable to the company and the directors shall apply as regards a borough to the council, and as regards a parish to the commissioners; and all deeds and writings which under such provisions are required or directed to be made or executed under the common seal of the company shall in the application of such provisions to this Act be deemed to be required or directed to be made or executed as regards a borough under the common seal of the mayor aldermen and burgesses, and as regards a parish under the common seal of the commissioners; and so much of such provisions as are applicable to the "secretary of the company" shall apply to the clerk; and in such of the said provisions as relate to the inspection of accounts as regards a borough the burgesses, and as regards a parish the ratepayers, shall have the privileges of shareholders.

8 & 9 Vict. c. 16, incorporated with this Act for certain purposes.

<sup>a</sup> Sec 35 & 36 Vict. c. 79, s. 34, re-enacted in Part III. of Sched. V. to the Public Health Act 1875, *supra*.

Council  
may ap-  
propriate,  
with  
consent  
of the  
Treasury,  
lands in-  
vested in  
the mayor  
etc.

Commis-  
sioners  
may, with  
approval  
of vestry  
etc. ap-  
propriate  
lands  
belonging  
to parish;  
or con-  
tract for  
purchase  
of the  
same.

XXIV. And be it enacted that in any such borough the council, with the approval of the commissioners of Her Majesty's Treasury, may from time to time appropriate for the purposes of this Act in the borough any lands vested in the mayor aldermen and burgesses; and in any such parish the commissioners appointed under this Act, with the approval of the vestry and the guardians of the poor of the parish (if any), and of the Local Government Board,<sup>a</sup> may from time to time appropriate for the purpose of this Act in the parish any lands vested in such guardians, or in the churchwardens, or in the churchwardens and overseers of the parish, or in any feofees trustees or others, for the general benefit of the parish; and in any such parish the commissioners, with the approval of the vestry, and in any such borough the council, may from time to time contract for the purchasing or renting of any lands necessary for the purposes of this Act, and the property therein shall be vested in the mayor aldermen and burgesses in the case of a borough, or in the commissioners in the case of a parish.

Councils  
and  
commis-  
sioners  
may erect  
etc. public  
baths and  
wash-  
houses  
and open  
bathing  
places.

XXV. And be it enacted that the council and commissioners respectively may from time to time, on any lands so appropriated, purchased, or rented, or contracted so to be respectively, erect any buldings suitable for public baths and wash-houses, and as to such wash-houses either with or without open drying grounds, and make any open bathing-places, and convert any buildings into public baths and wash-houses, and may from time to time alter enlarge repair and improve the same respectively, and fit up furnish and supply the same respectively with all requisite furniture fittings and conveniences.

Councils  
and com-  
missioners  
may enter  
into con-  
tracts for  
the pur-  
poses of  
this Act.

XXVI. And be it enacted that the council and commissioners respectively may from time to time enter into any contract with any persons or companies for building and making and for altering enlarging repairing and improving such public baths and wash-houses and open bathing-places, and for supplying the same respectively with water, and for lighting the same respectively, and for fitting up the same respectively, and for furnishing any materials and things, and for executing and doing any other works and things necessary for the purposes of this Act; which contracts respectively shall specify the several works and things to be executed furnished and done, and the prices to be paid for the same, and the times when the works and things are to be executed furnished and done, and the penalties to be suffered in cases of non-performance; and all such contracts, or true copies thereof, shall be entered in books to be kept for that purpose: Provided always that no contract

<sup>a</sup> 34 & 35 Vict. c. 70.

above the value or sum of one hundred pounds shall be entered into by the council or the commissioners, for the purposes of this Act, unless previous to the making thereof fourteen days' notice shall be given in one or more of the public newspapers published in the county in which the borough or parish shall be situated, expressing the intention of entering into such contract, in order that any person willing to undertake the same may make proposals for that purpose, to be offered to the council or commissioners at a certain time and place in such notice to be mentioned, but it shall not be incumbent on the council or commissioners to contract with the person offering the lowest price.

No contract above £100 to be entered into without notice.

XXVII. And be it enacted that the council of any such borough, and the commissioners, with the approval of the vestry of any such parish, may, if they shall think fit, contract for the purchase or lease of any baths and wash-houses already or hereafter to be built and provided in any such borough or parish, and appropriate the same to the purposes of this Act, with such addition and alterations as they shall respectively deem necessary; and the trustees of any public baths and wash-houses which have been already or may hereafter be built or provided in any such borough or parish by private subscriptions or otherwise may, with the consent of the council of any such borough, or with the consent of the commissioners, and the approval of the vestry of any such parish, and with the consent of a majority of the committee or other persons by whom they were appointed trustees, sell or lease the said baths and wash-houses to the said council or commissioners respectively, or make over to them the management of such baths and wash-houses; and in all such cases the baths and wash-houses so purchased or leased, or of which the management has been so made over, shall be deemed to be within the provisions of this Act as fully as if they had been built or provided by the said council or commissioners; and the property therein shall be vested in the mayor aldermen and burgesses in the case of a borough, or in the commissioners in the case of a parish.

Council or commissioners may purchase existing baths etc.

See s. 12 of the Public Health Act 1875.

XXVIII. And be it enacted that any commissioners of waterworks trustees of waterworks water companies canal companies gas companies, and other corporations bodies and persons having the management of any waterworks canals reservoirs wells springs and streams of water and gasworks respectively, may in their discretion grant and furnish supplies of water or gas for such public baths and wash-houses and open bathing-places either without charge or on such other favourable terms as they shall think fit.

Power to water and gas companies to supply water and gas to baths etc.

XXIX. And be it enacted that nothing in this Act contained shall render any member of the council of any borough, or any commissioner,

Council-lors and commissioners



not to be personally liable.

personally, or any of their lands goods chattels or monies (other than such lands goods chattels or monies as may be vested in or under the management or control of the council or commissioners respectively in pursuance of this Act), liable to the payment of any sum of money as or by way of compensation or satisfaction for or in respect of any thing done or suffered in due pursuance of this Act.

Persons may appeal against orders of councils and commissioners.

XXX. And be it enacted that every person who shall feel aggrieved by any byelaw order direction or appointment of or by the council or commissioners shall have the like power of appeal to the general quarter sessions as under the provisions of the Companies Clauses Consolidation Act 1845, incorporated with this Act, he might have if feeling aggrieved by any determination of any justice with respect to any penalty.

Council, etc. empowered to make sale and exchange of lands, with consent.

XXXI. And be it enacted that the council, with the approval of the commissioners of Her Majesty's Treasury, and the commissioners appointed under this Act, with the approval of the vestry, and of the commissioners of Her Majesty's Treasury respectively, may from time to time make sale and dispose of any lands vested in the mayor aldermen and burgesses, or in the commissioners respectively for the purposes of this Act, and apply the proceeds in or towards the purchase of other lands better adapted for such purposes, and may, with the like approval, exchange any lands so vested, and either with or without paying or receiving any money for equality of exchange, for any other lands better adapted for such purposes, and the mayor aldermen and burgesses, or the commissioners, may convey the lands so sold or exchanged accordingly.

When baths etc. are considered too expensive they may, with approval of Treasury, be sold, and proceeds of sale carried to borough fund or poor's rate.

XXXII. And be it enacted that whenever any public baths or wash-houses or open bathing-places which shall have been for seven years or upwards established under the authority of this Act shall be determined by the council or by the vestry, in accordance with a previous recommendation of the commissioners, to be unnecessary or too expensive to be kept up, the council or commissioners, with the approval of the commissioners of Her Majesty's Treasury, may sell the same for the best price that can reasonably be obtained for the same, and the mayor aldermen and burgesses, or the commissioners, shall convey the same accordingly; and the purchase money shall be paid to such person as the council or commissioners shall appoint, and his receipt shall be a sufficient discharge for the same; and the net proceeds of such sale shall be paid to the credit of the borough fund, or of the rate for the relief of the poor of the parish.

Management to be vested in councils

XXXIII. And be it enacted that the general management regulation and control of the public baths and wash-houses, and open bathing-places established under this Act shall, subject to the provisions of this



Act, be as to any borough vested in and exercised by the council, and as to any parish vested in and exercised by the commissioners. and parish commissioners.

See s. 10 of the Public Health Act 1875.

XXXIV. And be it enacted that the byelaws which the council and commissioners respectively may from time to time make alter repeal and enforce shall include such byelaws for the management use and regulation of the public baths and wash-houses and open bathing-places, and of the persons resorting thereto respectively, and for determining from time to time the charges for the use of such baths and wash-houses and open bathing-places respectively, as the council and commissioners respectively shall think fit, and they respectively may appoint any penalty not exceeding five pounds for any and every breach, whether by their officers or servants, or by other persons, of any byelaw made by them respectively; and such byelaws shall make sufficient provision for the several purposes respectively expressed in the Schedule (A) to this Act: Provided always that no byelaw made under the authority of this Act shall be of any legal force until the same shall have received the approval of the Local Government Board.<sup>a</sup> Council, etc. may make bye-laws for regulating the use of baths and wash-houses etc. and charges thereat. Byelaws to be approved by the Local Government Board.

XXXV. And be it enacted that a printed copy or sufficient abstract of the byelaws relating to the use of the baths and open bathing-places respectively shall be put up in every bath-room and open bathing-place respectively; and a printed copy or sufficient abstract of the byelaws relating to the use of the wash-houses shall be put up in some convenient place near every washing tub or trough, or every pair of washing tubs or troughs, in every wash-house. Copies or abstracts of byelaws to be hung up in every bath room etc.

XXXVI. And be it enacted that the number of baths for the labouring classes in any building or buildings under the management of the same council or commissioners shall not be less than twice the number of the baths of any higher class if but one, or of all the baths of any higher classes if more than one, in the same building or buildings. Proportion of baths for the labouring classes.

XXXVII. And be it enacted that the council and the commissioners respectively may from time to time make such reasonable charges for the use of the baths and wash-houses and open bathing-places respectively provided under this Act as they shall think fit, but not exceeding such charges as are mentioned in the Schedule (B) annexed to this Act, unless for the use of any washing tub or trough for more than two hours in any one day, for which any charges may be made which the council or commissioners respectively shall deem reasonable. Charges to be fixed by councils and commissioners not exceeding those in Schedule (B).

See s. 6 of 10 & 11 Vict. c. 61, *infra*, p. 338.

<sup>a</sup> 34 & 35 Vict. c. 70.

As to recovery of charges at wash-houses.

XXXVIII. And be it enacted that for the recovery of the charges at such wash-houses the officers servants and others having the management thereof may detain the clothes brought to be washed or other goods and chattels of any person refusing to pay the charge to which such person may be liable, or any part thereof, till full payment thereof be made, and in case such payment be not made within seven days may sell such clothes goods and chattels, or any of them, returning the surplus proceeds of such sale, after deducting the unpaid charge and the expenses of such detention and sale, and the unsold articles, if any, on demand, to such person.

Penalty for council, commissioners, or officers taking fees beyond salaries, or being interested in contracts.

XXXIX. And be it enacted that if any clerk or other officer, or any servant who shall be in anywise employed by any council or commissioners in pursuance of this Act, shall exact or accept any fee or reward whatsoever for or on account of any thing done or forborne or to be done or forborne in pursuance of this Act, or on any account whatsoever relative to putting this Act into execution, other than such salaries wages or allowances as shall have been appointed by the council or commissioners, or shall in anywise be concerned or interested in any bargain or contract made by the council or commissioners for or on account of any thing done or forborne or to be done or forborne in pursuance of this Act, or on any account whatsoever relative to the putting of this Act into execution, or if any person during the time he holds the office of member of the council or commissioner shall exact or accept any such fee or reward, or shall accept or hold any office or place of trust created by virtue of this Act, or be concerned directly or indirectly in any such bargain or contract, every such person so offending shall be incapable of ever serving or being employed under this Act, and shall for every such offence also forfeit the sum of fifty pounds.

Application of penalties.

XL. And be it enacted that such part of any penalty recovered under this Act as shall not be awarded to the informer shall be paid to the credit as regards a borough of the borough fund, and as regards a parish of the rate for the relief of the poor thereof.

Act may be amended etc.

XLI. And be it enacted that this Act may be amended or repealed by any Act to be passed in this session of Parliament.

## SCHEDULES REFERRED TO BY THE FOREGOING ACT.

## SCHEDULE (A).

*Byelaws to be made in all Cases.*

For securing that the baths and wash-houses and open bathing-places shall be under the due management and control of the officers servants or others appointed or employed in that behalf by the council or commissioners.

For securing adequate privacy to persons using the baths and wash-houses and open bathing-places, and security against accidents to persons using the open bathing-places.

For securing that men and boys above eight years old shall bathe separately from women and girls and children under eight years old.

For preventing damage disturbance interruption and indecent and offensive language and behaviour, and nuisances.

For determining the duties of the officers servants and others appointed by the council or commissioners.

In parishes. For regulating the procedure of the commissioners.

## SCHEDULE (B).

[Repealed by 10 & 11 Vict. c. 61.]

10 & 11 VICT. c. 61.

An Act to amend the Act for the Establishment of Public Baths and Wash-houses.  
[2nd July 1847.]

9 & 10  
Vict. c. 74.

Recited  
Act and  
this Act  
to be con-  
strued as  
one.

Interpre-  
tation of  
expres-  
sions in  
recited  
Act and  
this Act.

Acts of  
Commis-  
sioners of  
Public  
Baths, etc.  
to be valid  
notwith-  
standing  
informali-  
ties.

**W**HEREAS an Act was passed in the last session of Parliament. intituled "An Act to encourage the Establishment of Public Baths and Wash-houses;" and whereas it is expedient to afford additional facilities for the establishment of public baths and wash-houses and open bathing-places: Be it enacted, by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and commons, in this present Parliament assembled, and by the authority of the same, that the recited Act, as amended by this Act, and this Act shall be construed and be carried into execution as one Act.

II. And be it enacted and declared that the following words and expressions in the recited Act shall have in the said Act and this Act the several meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction; (that is to say,)

"Parish" shall mean not only every place having separate overseers of the poor and separately maintaining its own poor, but also every place maintaining its own poor and having a vestry:

"Ratepayers" shall mean all persons for the time being assessed to and paying rates for the relief of the poor of the Parish:

"Vestry" shall mean not only a vestry as defined in the said Act, but also any body of persons, by whatever name distinguished, acting by virtue of any Act of Parliament, prescription, custom, or otherwise as or instead of a vestry or select vestry.

III. And be it enacted that when any person shall have been appointed to the office of Commissioners of Public Baths and Wash-houses for any parish before the passing of this Act, the recited Act shall be deemed to have been duly adopted for such parish notwithstanding that there may have been any defect or irregularity in or in any way concerning such adoption; and all Acts and proceedings of any person in possession of the office of such commissioner, and acting



in good faith as such commissioner, whether appointed before or after the passing of this Act, shall, notwithstanding his disqualification or want of qualification for or any defect or irregularity in or in any way concerning his appointment to such office, be as valid and effectual as if he were duly qualified or there had not been any such defect or irregularity.

IV. And be it enacted that the Lands Clauses Consolidation Act 1845 shall be incorporated with the recited Act and this Act: Provided always that the council and commissioners respectively shall not purchase or take any lands otherwise than by agreement.

Incorporation of 8 & 9 Vict. c. 18. Council, &c., not to take lands, &c.

V. And be it enacted that the number of washing tubs or troughs for the labouring classes in any building or buildings under the management of the same council or commissioners shall not be less than twice the number of the washing tubs or troughs of any higher class, if but one, or of all the higher classes if more than one, in the same building or buildings.

Proportion of washing accommodation for labouring classes.

VI. And be it enacted that so much of the recited Act as enacts that the council and commissioners respectively may make such reasonable charges for the use of the baths and wash-houses and open bathing-places as they think fit, not exceeding such charges as are mentioned in the Schedule (B) to that Act, shall be repealed.

So much of recited Act as regulates charges for use of baths, &c., repealed.

VII. And be it enacted that the council and the commissioners respectively may from time to time make such reasonable charges for the use of the baths and wash-houses and open bathing-places provided under the recited Act and this Act respectively as they think fit, not exceeding the charges mentioned in the Schedule annexed to this Act.

Power to make charges for use of baths, &c., not exceeding those in the schedule.

VIII. And be it enacted that this Act may be amended or repealed by any Act to be passed in this session of Parliament.

Act may be amended, &c.

#### SCHEDULE TO WHICH THIS ACT REFERS.

##### *Charges for the Baths and Wash-houses and open Bathing-places.*

##### 1. BATHS FOR THE LABOURING CLASSES.

Every bath to be supplied with clean water for every person bathing alone, or for several children bathing together, and in either case with one clean towel for every bather.

For one person above eight years old :

Cold bath, or cold shower bath, any sum not exceeding One penny.

Warm bath, or warm shower bath, or vapour bath,  
any sum not exceeding - - - - Two-pence.

For several children, not above eight years old, nor exceeding four,  
bathing together :

Cold bath, or cold shower bath, any sum not  
exceeding - - - - Two-pence.

Warm bath, or warm shower bath, or vapour bath,  
any sum not exceeding - - - - Four-pence.

## 2. BATHS OF ANY HIGHER CLASS.

Such charges as the council and the commissioners respectively think fit, not exceeding in any case three times the charges above mentioned for the several kinds of baths for the labouring classes.

## 3. WASH-HOUSES FOR THE LABOURING CLASSES.

Every wash-house to be supplied with conveniences for washing and drying clothes and other articles.

For the use by one person of one washing tub or trough, and of a copper or boiler (if any), or, where one of the washing tubs or troughs shall be used as a copper or boiler, for the use of one pair of washing tubs or troughs, and for the use of the conveniences for drying :

For one hour only in any one day, any sum not  
exceeding - - - - One penny.

For two hours together, in any one day, any sum  
not exceeding - - - - Three-pence.

Any time over the hour or two hours respectively, if not exceeding five minutes, not to be reckoned.

For two hours not together, or for more than two hours in any one day, such charges as the council and the commissioners respectively think fit.

For the use of the washing conveniences alone, or of the drying conveniences alone, such charges as the council and the commissioners respectively think fit, but not exceeding in either case the charges for the use for the same time of both the washing and the drying conveniences.

## 4. WASH-HOUSES OF ANY HIGHER CLASS.

Such charges as the council and the commissioners respectively think fit.

5. OPEN BATHING-PLACES, where several persons bathe in the same water, for one person one halfpenny.

26 &amp; 27 VICT. c. 40.

An Act for the Regulation of Bakehouses.

[13th July 1863.]

WHEREAS it is expedient to limit the hours of labour of young persons employed in bakehouses, and to make regulations with respect to cleanliness and ventilation in bakehouses: Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same, as follows:

I. This Act may be cited as "The Bakehouse Regulation Act 1863."

Short  
title.

II. For the purposes of this Act the words hereinafter mentioned shall be construed as follows; that is to say,

Interpre-  
tation of  
terms.

"Local authority" shall, as respects any place, mean the persons or bodies of persons defined to be the local authority in that place by the one hundred and thirty-fourth section of the Act passed in the session holden in the eighteenth and nineteenth years of the reign of Her present Majesty, chapter one hundred and twenty, or by the Nuisances Removal Acts hereinafter mentioned; that is to say, as to England, by the Act passed in the session holden in the eighteenth and nineteenth years of the reign of Her present Majesty, chapter one hundred and twenty-one, as amended by the Act passed in the session holden in the twenty-third and twenty-fourth years of the reign of Her present Majesty, chapter seventy-seven; . . . .

See ss. 10, 11 of the Public Health Act 1875, *supra*, which make urban and rural sanitary authorities the authorities for the execution of this Act.

"Bakehouse" shall mean any place in which are baked bread biscuits or confectionery, from the baking or selling of which a profit is derived:

"Employed," as applied to any person, shall include any person working in a bakehouse, whether he receives wages or not:

"Occupier" shall include any person in possession.

“The court” shall include any justice or justices, sheriff or sheriff substitute, magistrate or magistrates, to whom jurisdiction is given by this Act.

Limita-  
tion of  
hours of  
labour of  
persons  
under 18  
years of  
age.

III. No person under the age of eighteen years shall be employed in any bakehouse between the hours of nine of the clock at night and five of the clock in the morning.

If any person is employed in contravention of this section the occupier of the bakehouse in which he is employed shall incur the following penalties in respect of each person so employed ; that is to say,

For the first offence, a sum not exceeding two pounds :

For a second offence, a sum not exceeding five pounds :

For a third and every subsequent offence, a sum not exceeding one pound for each day of the continuance of the employment in contravention of this Act, so that no greater penalty be imposed than ten pounds.

Regula-  
tions as to  
cleanliness  
of bake-  
house.

IV. The inside walls and ceiling or top of every bakehouse situate in any city town or place containing according to the last census a population of more than five thousand persons, and the passages and staircase leading thereto, shall either be painted with oil or be limewashed, or partly painted and partly limewashed : where painted with oil, there shall be three coats of paint, and the painting shall be renewed once at least in every seven years, and shall be washed with hot water and soap once at least in every six months : where limewashed, the limewashing shall be renewed once at least in every six months.

Every bakehouse wherever situate shall be kept in a cleanly state, and shall be provided with proper means for effectual ventilation, and be free from effluvia arising from any drain privy or other nuisance.

If the occupier of any bakehouse fails to keep the same in conformity with this section he shall be deemed to be guilty of an offence against this Act, and to be subject in respect of such offence to a penalty not exceeding five pounds.

The court having jurisdiction under this Act may, in addition to or instead of inflicting any penalty in respect of an offence under this section, make an order directing that within a certain time to be named in such order certain means are to be adopted by the occupier for the purpose of bringing his bakehouse into conformity with this section ; the court may upon application enlarge any time appointed for the adoption of the means directed by the order, but any non-compliance with the order of the court shall, after the expiration of the time as originally limited or enlarged by subsequent order, be deemed to be a continuing offence, and to be punishable by a penalty not exceeding one pound for every day that such non-compliance continues.



V. No place on the same level with a bakehouse situate in any city town or place containing according to the last census a population of more than five thousand persons, and forming part of the same building, shall be used as a sleeping place, unless it is constructed as follows; that is to say,

As to sleeping places near bake-houses.

Unless it is effectually separated from the bakehouse by a partition extending from the floor to the ceiling :

Unless there be an external glazed window of at least nine superficial feet in area, of which at the least four and a half superficial feet are made to open for ventilation ;

and any person who lets occupies or continues to let or knowingly suffers to be occupied any place contrary to this Act, shall be liable for the first offence to a penalty not exceeding twenty shillings, and for every subsequent offence to a penalty not exceeding five pounds.

VI. It shall be the duty of the local authority to enforce within their district the provisions of this Act, and in order to facilitate the enforcement thereof any officer of health, inspector of nuisances, or other officer appointed by the local authority, hereinbefore referred to as the inspector, may enter into any bakehouse at all times during the hours of baking, and may inspect the same, and examine whether it is or not in conformity with the provisions of this Act; and any person refusing admission to the inspector, or obstructing him in his examination, shall for each offence incur a penalty not exceeding twenty pounds; and it shall be lawful for any inspector who is refused admission to any bakehouse, in pursuance of this section, to apply to any justice for a warrant authorising him, accompanied by a police-constable, to enter into any such bakehouse for the purpose of examining the same, and to enter the same accordingly.

Power to local authority to enforce provisions of this Act.

VII. All expenses incurred by any local authority in pursuance of the provisions of this Act may be paid out of any rate leviable by them, and applicable to the payment of the expenses incurred by the local authority under the said *Nuisances Removal Acts*, and the said authority may levy such rate accordingly.

As to expenses of local authority acting under this Act.

See ss. 10, 11, 207, 229 and 313 of the Public Health Act 1875, *supra*.

### *Penalties.*

VIII. All penalties under this Act may be recovered summarily before two or more justices; as to England, in manner directed by an Act passed in the session holden in the eleventh and twelfth years of the reign of Her Majesty Queen Victoria, chapter forty-three, intituled "An Act to facilitate the Performance of the Duties of Justices of the Peace out

Recovery of penalties.

of Sessions within England and Wales with respect to summary Convictions and Orders," or any Act amending the same . . . . .

Jurisdiction of certain magistrates.

IX. Any act power or jurisdiction hereby authorized to be done or exercised by two justices may be done or exercised by the following magistrates within their respective jurisdictions; that is to say, as to England, by any metropolitan police magistrate or other stipendiary magistrate sitting alone at a police court or other appointed place, or by the lord mayor of the city of London, or any alderman of the said city sitting alone or with others at the Mansion House or Guildhall; . . . .

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31 & 32 VICT. c. 130.

An Act to provide better Dwellings for Artizans and Labourers.

[31st July 1868.]

This Act was brought in by Mr. Torrens, and passed in the session of 1868, but has been very little used. It may now be regarded as virtually superseded by the Artizans' and Labourers' Dwellings Improvement Act 1875, printed in this Appendix *infra*.

WHEREAS it is expedient to make provision for taking down or improving dwellings occupied by working men and their families which are unfit for human habitation, and for the building and maintenance of better dwellings for such persons instead thereof: Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

I. In citing this Act it shall be sufficient to use the words "The Artizans and Labourers Dwellings Act 1868."

Application of Act, and definition of "Local Authority," "Local Rate."

II. This Act shall apply only to places named in the first column of table (A) in the First Schedule annexed hereto; and "local authority," "local rate," and "clerk of local authority" shall mean "the bodies of persons," "rate," and "officer" in that table in that behalf mentioned; and the said table shall be of the same force as if it were enacted in the

body of this Act: Provided always that this Act shall not apply to any city borough town or place that would otherwise be included within the said table, the population whereof does not according to the census for the time being in force amount to the number of ten thousand persons.

See s. 10 of the Public Health Act 1875, *supra*. It would seem that this proviso as to population is no longer in force.

III. The following words and expressions have in this Act the following meanings, unless excluded by the subject or context; that is to say, Interpretation of terms:

The word "street" includes any court alley street square or row of houses: "Street" and "Square:

The word "premises" means any dwelling house or inhabited building, and the site thereof, with the yard garden outhouses and appurtenances belonging thereto or usually enjoyed therewith: "Pre-mises:"

The expression "owner," in addition to the definition given by the Lands Clauses Act, shall include all lessees or mortgagees of any premises required to be dealt with under this Act, except persons holding or entitled to the rents and profits of such premises for a term of years, of which twenty-one years do not remain unexpired: "Owner: "

"Person" shall include a body of persons, corporate or unincorporate: "Person: "

"Quarter Sessions" shall include General Sessions . . . . . "Quarter Sessions: "

"Officer of Health" shall mean and include medical officer of health, sanitary inspector, or any statutory officer performing the duties which a medical officer or sanitary inspector performs under or by virtue of any Act of Parliament: "Officer of Health: "

In all cases in which the name of a local authority, local court, magistrate, or officer having any local jurisdiction in respect of their or his office is referred to, without mention of the locality to which the jurisdiction extends, such reference is to be understood to indicate the local authority local court magistrate or officer having jurisdiction in that place within which are situate the premises or other subject matter or any part thereof to which such reference applies: "Local Officer," &c.

"The Metropolis" shall not include the city of London or the liberties thereof, but shall include all other parishes or places within the jurisdiction of the Metropolitan Board of Works: "The Metropolis: "

"Borough" in England shall mean any place for the time being subject to the Act passed in the session holden in the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intituled "An Act to provide for the Regulation of Municipal Corporations in England and Wales." "Borough" in England.

\* \* \* \* \*

As to appointment of officers of health and payment of salaries.

IV. *If in any place to which this Act applies there is no officer of health within the meaning of this Act, the local authority, with the approval of one of Her Majesty's Principal Secretaries of State, shall forthwith appoint such an officer for such period as shall be necessary, shall assign him his duties, and pay him such salary or emolument out of the local rate as they, with such approval as aforesaid, shall think fit. The local authority, with the like approval, may from time to time remove any officer appointed under this section, and in manner aforesaid appoint another officer in his place.*

Repealed by s. 11 of the Public Health Act 1872. See ss. 189, 190 of the Public Health Act 1875, which make the appointment of a medical officer of health compulsory on all sanitary authorities.

Officer of health to report as to condition of streets.

V. If in any place to which this Act applies the officer of health find that any premises therein are in a condition or state dangerous to health so as to be unfit for human habitation, he shall report the same in manner hereinafter provided to the local authority.

Officer of health to deliver copies of report to clerk of local authority, who shall refer the same to a surveyor, &c.

VI. Every report made under this Act by the officer of health shall be made in writing and delivered to the clerk of the local authority, and the local authority shall refer such report to a surveyor or engineer, who shall thereupon consider the report so furnished to him, and report to the local authority what is the cause of the evil so reported on, and the remedy thereof, and if such evil is occasioned by defects in any premises whether the same can be remedied by structural alterations and improvements or otherwise, or whether such premises, or any and what part thereof, ought to be demolished.

Local authority to cause copies of reports to be given to owner, who may object to the same, and to prepare plan and specification of required works.

VII. Upon receipt of the report of the surveyor and engineer the local authority shall cause copies of both the reports to be given to the owner, with notice of the time and place appointed by the local authority for the consideration thereof, and such owner shall be at liberty to attend and to state his objections (if any) to such reports, or either of them, including therein any objection that the necessary works ought to be done by or at the expense of some other person or persons, or at the expense of the parish or district in which the premises are situate; and on such objections the local authority shall make an order in writing, signed by the clerk of such local authority, which shall be subject to appeal in manner hereinafter mentioned; and if such objections are overruled, the local authority, if they deem it necessary, shall cause to be prepared a plan and specification of the works (if any), and an estimate of the cost of such works, required to be executed.

Clerk of local authority to give notice to owner

VIII. The clerk of the local authority shall thereupon forthwith give notice to the owner of the premises, informing him that a plan and specification and estimate of the cost of such works as are required in reference thereto have been prepared, and that such plan and specification



and estimate may, if such owner think fit, be inspected and transcribed by him or his agent at the office of the clerk of the local authority without charge; and any such owner may at any time within three weeks after the receipt of such notice state in writing to the clerk of the local authority any objection which he may entertain to the said plan specification and estimate, or any of them, and may attend at a time and place to be appointed for such purpose by the local authority to support such objections; and the local authority shall thereupon make such order in relation thereto as they may think fit; and if they decide that any alteration is to be made in the said plan specification and estimate, the local authority shall cause such alteration to be made accordingly, and the plan and specification and estimate so amended shall be the plan and specification and estimate according to which the works shall be executed.

of plan,  
&c., of re-  
quired  
works  
having  
been pre-  
pared.

IX. Any person aggrieved by any order of the local authority, or his agent, may appeal against the same to the Court of Quarter Sessions held next after the making of the said order, but the appellant shall not be held in support of the appeal unless within one calendar month after the making of the order appealed against he give to the clerk of the local authority notice in writing stating his intention to appeal, together with a statement in writing of the grounds of appeal, and shall, within two days after giving such notice, enter into a recognizance before some justice of the peace, with sufficient securities, conditioned to try such appeal at the said court, and to abide the order of and pay such costs as as may be awarded by the court or any adjournment thereof; and the court, upon the appearing of the parties, or upon their making default, shall have full power and jurisdiction to make such order and give such directions as under the circumstances shall seem just, and may, according to its discretion, award such costs to the party appealing or appealed against as they think proper, and the determination of the court in or concerning the premises shall be conclusive and binding on all persons to all intents or purposes whatsoever: Provided,

Persons  
aggrieved  
by order of  
local au-  
thority  
may ap-  
peal  
against  
the same.

First, that if there be not time to give such notice and enter into such recognizance as aforesaid, then such appeal may be made to, and such notice statement and recognizance be given and entered into for the next sessions at which the appeal can be heard:

Secondly, that on the hearing of the appeal no grounds of appeal shall be gone into or entertained other than those set forth in such statement as aforesaid:

Thirdly, that in any case of appeal the court shall, at the request of either party, state the facts specially for the determination, in England or Ireland, of Her Majesty's Court of Queen's Bench, or in Scotland of either division of the Court of Session, in which case

it shall be lawful to remove the proceedings, by writ of certiorari or by petition, into the said Courts of Queen's Bench or to the Court of Session respectively :

Fourthly, that pending any appeal no work shall be done nor proceedings taken under any order until after the determination of such appeal, or it shall cease to be prosecuted.

Owner may appeal where decision of local authority is against him.

X. If the owner appeal from the decision of the local authority upon the objection that he is not responsible for the state and condition of his premises, he shall be bound to give notice of his appeal, and a statement in writing of the ground thereof, to the person or persons, or to the parish or district, alleged by him to be the occasion of his premises being in such a state or condition as to render them liable to be reported upon under the provisions of the Act, and such person or persons, or parish or district, may appear before the court, and be heard against his or their alleged liability.

Where local authority decide in favour of owner, reports and notices to be sent to parties liable.

XI. If the local authority shall decide in favour of the objection of the owner of the premises that some other person or persons, or that the parish or district in which the premises are situate, is or are responsible for the state and condition of his premises, the local authority shall forthwith send copies of the reports of the officer of health and of the surveyor or engineer to such person or persons, or to the officer of such parish or district, together with notice of his or their alleged liability, and shall appoint a time and place for hearing the parties so alleged to be liable, and give notice thereof to the said parties and also to the owner of the premises, and the local authority shall make such order thereupon as to them shall seem just, and the same shall be subject to appeal in manner aforesaid.

On representation by householders that disease exists in any house, officer of health to inspect & report.

XII. If and whenever any four or more householders living in or near to any street by writing under their hands represent to the officer of health that in or near that street any premises are in a condition or state dangerous to health so as to be unfit for human habitation, he shall forthwith inspect the premises, and report thereon; but the absence of any such representation shall not excuse him from inspecting any premises, and reporting thereon.

If local authority neglect to enforce Act, the Local Government

XIII. In the event of the local authority declining or neglecting for the space of three calendar months after receiving such report to take any proceedings to put this Act in force, the householders who signed such representation may address a memorial to the Local Government Board <sup>a</sup> stating the circumstances, and asking that an inquiry be made,

<sup>a</sup> 34 & 35 Vict. c. 70.

and upon receipt of such memorial the Local Government Board may direct the local authority to proceed under the provisions of the Act, and such direction shall be binding on the local authority.

Board may compel it to proceed.

XIV. Within three calendar months after the service on the owner of the order by the clerk of the local authority, or in the case of appeal within one calendar month after the order of quarter sessions, or in the event of a further appeal within one calendar month after the order of the Court of final appeal, the persons so served with the order of the local authority shall each of them signify in writing to the clerk of the local authority whether he is willing to effect the works required to be executed; and where two or more persons shall so signify, the right of effecting the works shall be given first to the person whose ownership is first or earliest in title.

Owner to signify to clerk of local authority whether he is willing to execute specified works.

XV. Where the owner of the premises and his residence or place of business are known to the local authority, it shall be the duty of the clerk of the local authority, if the owner be residing or have a place of business within the district of such local authority, to give any notice by this Act required to be served on him to the owner, or for him, to some inmate of his place of residence or business within the place; and if he be not residing within such district, or has no place of business therein, then to send the notice by post in a registered letter addressed to the owner at his place of residence or business; provided that the notice served upon the agent of the owner shall be deemed notice to the owner.

Service of notice on owner whose name and residence are known.

XVI. Where the owner of the premises or his residence or place of business is not known to, or after diligent inquiry cannot be found by, the local authority, then the clerk of the local authority may serve the notice by leaving it, addressed to the owner, with some occupier of the premises, or if there be not an occupier, then by causing it to be put up on some conspicuous part of the premises.

Service of notice on owner whose name or residence is not known.

XVII. Every notice required to be given by the clerk of the local authority by this Act shall be in writing or print, or partly in writing and partly in print, and shall be signed by the clerk of the local authority or deputy appointed by him.

Notices to be signed by the local authority.

XVIII. The owner on whom the local authority shall have imposed in the first instance the duty of executing the work shall, within two calendar months thereafter, commence the works as shown on the plan and described in the specification, and shall diligently proceed with and complete the same in conformity with the specification to the satisfaction of the surveyor or engineer appointed by the local authority; and if

Local authority require owners to execute works as in specification.



Proceedings of local authority in case owners neglect.

such owner shall fail therein, the local authority shall require the owner next in order as aforesaid to execute the said works, and in case of his default shall require the remaining owners in their order as aforesaid; and if all such owners shall make default, the local authority shall, as the case may seem to them to require, either order the premises to be shut up or to be demolished, or may themselves execute the required works in conformity with the specification.

Provision in case local authority themselves execute the works.

XIX. Where the local authority themselves execute the works, they may apply to the Court of Quarter Sessions having jurisdiction over the place of which they are the local authority for an order charging on the premises on which the works have been executed the amount of all costs charges and expenses that have been incurred by such authority in or about the execution of such works, including the costs of obtaining the order; and the Court of Quarter Sessions, when satisfied of the amount so expended, shall make an order accordingly, charging on the premises the amount of such costs charges and expenses, together with interest at the rate of four pounds per cent. per annum, and such order shall be filed and recorded in manner hereinafter mentioned, and thereupon the amount of principal and interest thereby secured shall be a charge on the house, bearing interest at four per cent. and having priority over all other estates incumbrances and interests whatsoever; and the local authority shall, for the purpose of obtaining satisfaction of the monies so charged, or of any interest thereon, be deemed to be a mortgagee of an absolute estate in the house, and shall be invested with all the powers conferred on mortgagees by Part II. of the Act of the session of the twenty-third and twenty-fourth years of the reign of Her present Majesty, chapter one hundred and forty-five, and in Scotland such order shall be recorded in the appropriate Register of Sasines.

Local authority to pay compensation when total demolition required.

XX. If the requirements of the order involve the total demolition and not the improvement of the premises specified therein, the owner shall, within three months after service of the order, proceed to take down and remove the premises, and if such owner fail therein, then the local authority shall proceed to take down and remove the same; and the local authority shall sell the materials, and after deducting the expenses incident to such taking down and removal, pay over the balance of monies, if any, to the owner.

Determination of tenancies.

XXI. Where at the time of making the order the premises specified therein, or any part thereof, are or is subject to any tenancy from year to year, or for a year or for any less term, the local authority shall give notice to every such tenant, stating the time at which such tenancy will be determined.



XXII. Provided always that nothing in this Act contained shall prejudice or interfere with the rights or remedies of any owner for the breach, non-observance, or non-performance of any covenant or contract entered into by a tenant or lessee in reference to any premises in respect of which any order shall be made by a local authority; and if any owner shall be obliged to take possession of any premises in order to comply with any order made under the provisions of this Act, such entry or taking possession shall not affect his right to avail himself of any such breach, non-observance, or non-performance that may have occurred prior to his so taking possession.

Remedies of owner for breach of covenant, &c., not to be prejudiced.

XXIII. If the order be that the premises require improvement, the owner, including therein the owner of the first estate of inheritance, if he think fit, may, instead of effecting the works required by the plan and specification, take down the premises; but in every such case, and also in the event of the owner desiring to retain the site of the premises required by the order to be totally demolished, no house or other building or erection shall be erected on all or any part of the site of the premises so taken down which shall be injurious to health; and the local authority may at any time make an order upon the owner to abate or alter the said house building or erection, as the case may require; and in the event of noncompliance with such order the local authority may, at the expense of the owner thereof, abate or alter any house or other building or erection at any time wholly or partly erected contrary to the provisions of this section.

Owner instead of effecting improvements may take down premises.

XXIV. When there are two or more owners of any premises, and it appears to any two justices in petty sessions, on application of any owner of such premises, that the interest of the applicant in the premises will be prejudiced by the neglect and default of any other owner to deal with the premises in conformity with the order so made, it shall be lawful for such justices, if the applicant undertake to their satisfaction to bring the premises into conformity with such order, to make an order empowering the applicant forthwith to take possession of the premises, and to do all such works as may be necessary for bringing the same into conformity with such order, and within such time as shall be fixed by such justices, and on non-compliance by such last-mentioned applicant with his undertaking it shall be lawful for the justices to make a like order in favour of any other owner.

Application may be made to justices where more than one owner of premises included in order under Act, and any one owner neglects to comply with such order.

XXV. Where any owner has completed any works required to be executed by a local authority in pursuance of this Act, he may on the completion thereof apply to the local authority for a charging order charging on the premises on which the works have been executed an annuity as compensation to the owner for the expenditure incurred by him in executing such works, and shall produce to the local authority

Grant of annuity to owner on completion of works.

the certificate of their surveyor or engineer that the works have been executed to his satisfaction, and also the accounts and vouchers for such works, and the local authority, when satisfied that the owner has duly executed such works, shall make a charging order accordingly.

The annuity charged shall be a sum of six pounds for every £100 of such expenditure, and so in proportion for any less sum, to commence from the date of the order, and to be payable for a term of thirty years to the owner named in such order, his executors, administrators, or assigns.

Charging orders made under this Act shall be made according to the form marked A in the second Schedule hereto annexed, or as near thereto as the circumstances of the case will admit.

The costs of obtaining the order to be allowed by the local authority shall be deemed to be part of the expenditure incurred by the owner.

Incidence  
of charge.

XXVI. Every annuity created by a charging order under this Act shall be a charge on the premises comprised in the order, having priority over all existing and future estates interests and incumbrances, with the exception of quitrents and other charges incident to tenure, tithe commutation rentcharges, and any charges created under any Act authorizing advances of public money; and where more annuities than one are chargeable under this Act on any premises, such annuities shall, as between themselves, take order according to their respective dates.

Charges  
recover-  
able as  
rent-  
charges in  
lieu of  
tithes.

XXVII. Every annuity charged on any premises by a charging order under this Act may be recovered by the persons for the time being entitled to the same by the same means and in the like manner in all respects as if it were a rentcharge granted by deed out of the premises by the owner thereof.

An order  
to be evi-  
dence of  
compli-  
ance with  
Act.

XXVIII. An order made in pursuance of this Act charging an annuity on any premises shall be, both at law and in equity, conclusive evidence that all notices acts and proceedings by this Act directed with reference to or consequent on the obtaining such order, or the making such charge, have been duly served, done, and taken, and that such charge has been duly created, and that it is a valid charge on the premises declared to be subject thereto.

Registry  
of charg-  
ing order  
on pre-  
mises in  
Middlesex  
and York-  
shire.

XXIX. Every charging order made in pursuance of this Act relating to premises in Middlesex or Yorkshire shall be registered in the same manner respectively as if such charge were made by deed by the absolute owner of such lands without the aid of this Act; and a copy of every such charging order of the certificate of such surveyor or engineer as aforesaid, together with a copy of the accounts as passed by the local authority, and which copies shall be certified to be true

copies by the clerk of such local authority, shall, within six months after the date of such charging order, be deposited with the clerk of the peace of the county in which the premises are situate, who shall be entitled to a fee of ten shillings for filing and recording the same; and every charging order made in pursuance of this Act relating to premises in Scotland shall be recorded in the appropriate Register of Sasines.

XXX. The proprietor of any charge may, by deed under seal, stamped with the same *ad valorem* stamp as if it were an assignment of a charge created by deed, assign the benefit of the charging order, or of any portion of the charge comprised therein, to any other person; and on such assignment being executed the assignee shall have the same rights under the order as the proprietor would have had if no such assignment had been executed; and any assignee of a charging order may, by deed stamped in manner aforesaid, assign the charge to any other person. Any assignment of a charging order may be in form marked B in the Schedule hereto, or in any other convenient form.

Assign-  
ment of  
charge.

XXXI. All expenses incurred by the local authority in pursuance of this Act shall be defrayed by them out of a special local rate, not exceeding twopence in the pound in any year, which they are hereby empowered to assess and levy for the purposes of this Act.

As to ex-  
penses of  
local au-  
thority.

XXXII. The Public Works Loan Commissioners, as defined by the Public Works Loan Act, 1853, may, if they think fit, lend to any local authority, and any local authority may borrow from the said commissioners, such sums as the said authority may require for the purposes of this Act, but the amount of every loan shall be sanctioned by the Lords Commissioners of the Treasury.

Power to  
Public  
Works  
Loan  
Commis-  
sioners to  
advance  
monies to  
local au-  
thority.

See the Public Works Loans Act 1875, *infra*, in this Appendix.

XXXIII. Any summons notice writ or other proceeding at law or in equity, or otherwise, in relation to carrying into effect the objects and purposes of this Act, required to be served upon the local authority, may be lawfully served by delivering the same to the clerk of the local authority, or leaving the same at his office with some person employed there by him.

Service of  
notice on  
the local  
authority.

XXXIV. Any notice demand or other written document served by the local authority for the purposes of this Act shall be signed by the clerk of the local authority.

Notices  
served by  
local au-  
thority to  
be signed  
the clerk.

XXXV. Where any person at any time obstructs the officer of health or other person acting in the performance of anything which the local authority or their officers respectively are by this Act required or

Penalty  
for ob-  
structing  
officer of



health, &c.,  
in execu-  
tion of  
Act.

authorized to do, every person so offending shall for every such offence forfeit not exceeding twenty pounds.

Penalty  
for pre-  
venting  
execution  
of Act.

XXXVI. If the occupier of any premises prevents the owner thereof, or if the owner or occupier of any premises prevents the officer of health, or their officers agents servants or workmen, from carrying into effect with respect to the premises any of the provisions of this Act, after notice of the intention so to do has been given to the occupier or, as the case shall be, to the owner, any justice on proof thereof may make an order in writing requiring the occupier to permit the owner, or as the case shall be, requiring the owner or occupier, or both, to permit the officer of health, or the local authority and their officers agents servants and workmen, to do all things requisite for carrying into effect with respect to the premises the provisions of this Act; and if at the expiration of ten days after the service of such order of the justice the occupier or owner fails to comply therewith, every person so offending shall for every day during which the failure continues forfeit not exceeding twenty pounds; Provided that during any such failure by the occupier the owner, unless assenting thereto, shall not be liable to the forfeiture.

Appear-  
ance of  
local au-  
thority.

XXXVII. The local authority may appear before any judge justices borough magistrates sheriff or sheriff substitute by their clerk, and any company or body corporate may appear before the said magistrate or magistrates by any member of their board of management.

Recovery  
of penal-  
ties.

XXXVIII. Penalties under this Act may be recovered before two justices in manner directed by an Act passed in the session holden in the eleventh and twelfth years of the reign of Her Majesty Queen Victoria, chapter forty-three, intituled "An Act to facilitate the Performance of the Duties of Justices of the Peace out of Sessions within England and Wales with respect to Summary Convictions and Orders," or any Act amending the same. . . .

(Sections 39 and 40 relate exclusively to Scotland and Ireland respectively.)

Jurisdic-  
tion of  
certain  
magis-  
trates.

XLI. Any Act power or jurisdiction hereby authorized to be done or exercised by two justices may be done or exercised by the following magistrates within their respective jurisdictions; that is to say: as to England, by any metropolitan police magistrate or other stipendiary magistrate sitting alone at a police court or other appointed place, or by the Lord Mayor of the City of London, or any aldermen of the said City sitting alone or with others, at the Mansion House or Guildhall. . .

\* \* \* \* \*



## SCHEDULES.

## FIRST SCHEDULE.

TABLE A.  
ENGLAND AND WALES.

Places to which Act applies.	Description of Local Authority.	Description of Local Rate.	Description of Clerk of Local Authority.
<p>The city of London and the liberties thereof.</p> <p>Local Acts { 11 &amp; 12 Vict. c. 163. 14 &amp; 15 Vict. c. 91.</p>	Commissioners of Sewers of the City of London. Local Act 11 & 12 Vict. c. 163.	The consolidated rate. 11 & 12 Vict. c. 163, s. 158.	The clerk to the commissioners. 11 & 12 Vict. c. 163, s. 25.
The Metropolis	The vestries and district boards under the Act 18 & 19 Vict. c. 120, within their respective parishes and districts.	Rate to be levied for defraying the expenses of the Act 18 & 19 Vict. c. 120.	Clerk of the vestries or district boards.
Boroughs not within the jurisdiction of such local board as aforesaid.	The mayor, aldermen, and burgesses acting by the council.	The borough fund or other property applicable to the purposes of a borough rate or the borough rate.	The town clerk.
Any town not included in the above descriptions, and under the jurisdiction of commissioners, trustees, or other persons entrusted by any local act with powers of improving cleansing or paving any town.	The commissioners, trustees, or other persons entrusted by the local act with powers of improving cleansing or paving the town.	Any rate leviable by such commissioners, trustees, or other persons, or other funds applicable by them to the purposes of improving cleansing or paving the town.	The clerk of the commissioners or trustees or other persons or other officer performing the duties of clerk.
Places within the jurisdiction of local boards, constituted in pursuance of the Public Health Act 1848, and the Local Government Act 1868, or one of such Acts.	The local board.	General District Rate, 11 & 12 Vict. c. 63, s. 87.	Clerk of the local board or other officer performing duties of clerk. 11 & 12 Vict. c. 63, s. 37.

See section 10 of the Public Health Act 1875.

## SECOND SCHEDULE.

## FORM MARKED A.

*The Artizans' and Labourers' Dwellings Act 1868.*

County of

Parish of

No.

*Charging Order.*Insert description  
of local  
authority.

The \_\_\_\_\_ being the local authority under the above-mentioned Act, do, by this order under their hands and seal, charge the inheritance or fee of the premises mentioned in the schedule hereto with the payment to \_\_\_\_\_ of the sum of \_\_\_\_\_ pounds, payable yearly on the \_\_\_\_\_ day of \_\_\_\_\_ for the term of \_\_\_\_\_ years, and being in consideration of an expenditure of \_\_\_\_\_ pounds incurred by him in respect of the said premises.

## SCHEDULE.

Insert description  
of  
premises  
charged.

## FORM MARKED B.

*Form of Assignment of Charge.**To be endorsed on Charging Order.*

Dated the \_\_\_\_\_ day of \_\_\_\_\_ .

I, the within-named \_\_\_\_\_ in pursuance of the Artizans' and Labourers' Dwellings Act 1868, and in consideration of \_\_\_\_\_ pounds this day paid to me, hereby assign to \_\_\_\_\_ the within-mentioned charge.

(Signed)

THIRD SCHEDULE.

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I. *Form of Order by Court of Quarter Sessions or Petty Sessions, or Court of Burgh Magistrates in Scotland.*

\* \* \* \* \*

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II. *Form of Notice by Clerk of the Peace, Clerk of the Justices, or Clerk of the Court of Burgh Magistrates in Scotland to Clerk of Local Authority.*

\* \* \* \* \*

## 33 &amp; 34 VICT., c. 70.

An Act to facilitate in certain cases the obtaining of powers for the construction of Gas and Water Works and for the supply of Gas and Water. [9th August 1870.]

See section 161 of the Public Health Act 1875, and note, *supra*, p. 120. For the purposes of that Act, the Local Government Board are to be deemed to be substituted in this Act for the Board of Trade. It enables provisional orders to be obtained authorizing either gas or water undertakings, but its provisions with respect to water undertakings are not extended to sanitary authorities.

**B**E it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

*Preliminary.*

Short  
title.

I. This Act may be cited for all purposes as "The Gas and Water Works Facilities Act 1870."

Interpre-  
tation of  
terms.

II. For the purposes of this Act the terms herein-after mentioned shall have the meanings herein-after assigned to them; that is to say,

The term "local authority" shall mean the bodies of persons named in the table in the Schedule (A.) to this Act annexed :

The term "road" shall mean any carriageway being a public highway, and any bridge forming part of the same :

The term "road authority" shall mean any local authority board town council body corporate commissioners trustees vestry or other body or persons in whom a road as defined by this Act is vested, or who have the power to maintain or repair such road :

The term "district," in relation to a local authority, shall mean the area within the jurisdiction of such local authority :

The term "The Lands Clauses Acts" means, so far as the provisional order in which that term is used relates to England or Ireland, the Lands Clauses Consolidation Act 1845; and, so far as the same relates Scotland, the Lands Clauses Consolidation (Scotland) Act 1845; together with, in each case, the Lands Clauses Consolidation Acts Amendment Act, 1860.



III. This Act shall apply where powers are required for all or any of the purposes following :—

Act to apply to certain cases.

- (1.) To construct or to maintain and continue gasworks and works connected therewith, or to manufacture and supply gas in any district within which there is not an existing company corporation body of commissioners or person empowered by Act of Parliament to construct such works or to manufacture and supply gas :
- (2.) To construct or to maintain and continue waterworks and works connected therewith, or to supply water in any district within which there is not an existing company corporation body of commissioners or person empowered by Act of Parliament to construct such works and to supply water :
- (3.) To raise additional capital necessary for any of the purposes aforesaid :
- (4.) To enable two or more companies or persons duly authorised to supply gas or water in any district or in adjoining districts to enter into agreements jointly to furnish such supply, or to amalgamate their undertakings :
- (5.) To authorise two or more companies or persons supplying gas or water in any district or in adjoining districts to manufacture and supply gas or to supply water, and to enter into agreements jointly to furnish such supply and to amalgamate their undertakings :

and such purposes, or any one or more of them, as the case may be, shall, for the purposes of this Act, be deemed to be included in the term "gas undertaking" or "water undertaking," according as the same relate to the supply of gas or water ; provided that any gas or water company empowered as aforesaid may apply for and avail themselves of the facilities of this Act within their own districts respectively.

#### *Provisional Orders authorising Gas and Water Undertakings.*

IV. Provisional Orders authorising any gas undertaking or water undertaking under the authority of this Act may be obtained in any district by any company companies or person ; and in the construction of this Act the term "the undertakers" shall be deemed to include any such company companies or person.

By whom provisional orders authorising undertakings may be obtained.

Where the undertakers require powers for the purpose of constructing gasworks or waterworks, or works connected therewith, within any district, the consent of the local authority of such district shall be necessary before any provisional order can be obtained ; and where in such district there is a road authority distinct from the local authority, the consent of

such road authority shall also be necessary in any case where power is sought to break up any road of such road authority, before any provisional order can be obtained, unless the Board of Trade in any case in which the consent of the local authority or road authority is refused are of opinion, after inquiry, that, having regard to all the circumstances of the case, such consent ought to be dispensed with, and in such case they shall make a special report, stating the grounds upon which they have dispensed with such consent.

Notices  
and de-  
posit of  
documents  
by pro-  
moters as  
in sche-  
dule

V. The undertakers intending to make an application for a provisional order in pursuance of this Act shall proceed as follows:—

- (1.) On or before the first of November next before their application they shall give notice in writing of their intention to make the same to every company corporation or person (if any) supplying gas (if the proposed application relates to gasworks) or water (if the proposed application relates to waterworks) within the district to which the proposed application refers:
- (2.) In the months of October and November next before their application, or in one of those months, they shall publish notice of their intention to make such application by advertisement, according to the regulations contained in Part I. of the Schedule (B.) to this Act; and where it is proposed to abstract water from any stream for any waterwork, they shall give notice in writing of their intention to make such application to the owners or reputed owners, lessees or reputed lessees, and occupiers of all mills and manufactories or other works using the waters of such stream for a distance of twenty miles below the point at which such water is intended to be abstracted, such distance to be measured along the course of such stream, unless such waters shall within a less distance than twenty miles fall into or unite with any navigable stream, and then only to the owners or reputed owners, lessees or reputed lessees, and occupiers of such mills and manufactories as aforesaid which shall be situate between the point at which such water is proposed to be abstracted and the point at which such water shall fall into or unite with such navigable stream; and such notice shall state the name (if any) by which the stream is known at the point at which such water shall be immediately abstracted, and also the parish in which such point is situate, and the time and place of deposit of the plans and sections required by this Act to be deposited:
- (3.) On or before the thirtieth day of the same month of November they shall deposit the documents described in Part II. of the same schedule, according to the regulations therein contained:

- (4.) On or before the twenty-third day of December in the same year they shall deposit the documents described in Part III. of the same schedule, according to the regulations therein contained.

All maps plans and documents required by this Act to be deposited for the purposes of any provisional order may be deposited with the persons and in the manner directed by the Act of the session of Parliament held in the seventh year of the reign of His late Majesty King William the Fourth and the first year of Her present Majesty, intituled "An Act to compel clerks of the peace for counties and other persons to take the custody of such documents as shall be directed to be deposited with them under the standing orders of either House of Parliament;" and all the provisions of that Act shall apply accordingly.

VI. The Board of Trade shall consider the application, and also any objection thereto that may be lodged with them on or before such day as they from time to time appoint, and shall determine whether or not the undertakers may proceed with the application.

Power for Board of Trade to determine on application and on objection.

VII. Where it appears to the Board of Trade expedient and proper that the application should be granted, with or without addition or modification, or subject or not to any restriction or condition, and it has been proved to their satisfaction that all the requisitions of section five of this Act have been in all respects complied with, the Board of Trade may settle and make a provisional order accordingly.

Power for Board of Trade to make provisional order.

Every such provisional order if it relates to gasworks shall expressly restrict the undertakers from manufacturing gas or any residual products arising in the manufacture of gas on any land except such as is specified in that behalf in the order; and shall also expressly restrict them from storing gas on any land except such as is specified in that behalf in the order within three hundred yards from any dwelling-house existing at the time when the undertakers propose to store gas on such land, without the consent in writing of the owner lessee and occupier of such dwelling-house.

Every such provisional order shall contain such other provisions as, according to the nature of the application and the facts and circumstances of each case, the Board of Trade thinks fit to submit to Parliament for confirmation in manner provided by this Act; but so that any such provisional order shall not contain any provision for empowering the undertakers or any other person to acquire lands otherwise than by agreement, or to acquire any lands, even by agreement, except to an extent therein limited.

Form and contents of provisional order

The costs of and connected with the preparation and making of each provisional order shall be paid by the undertakers, and the Board of

Costs of order.



Trade may require the undertakers to give security for such costs before they proceed with the provisional order.

Publica-  
tion of  
provision-  
al order as  
in sche-  
dule.

VIII. When a provisional order has been made as aforesaid and delivered to the undertakers, the undertakers shall forthwith deposit and publish the same by advertisement according to the regulations contained in Part Four of the schedule (B.) to this Act.

Confirma-  
tion of pro-  
visional  
order  
by Act of  
Parlia-  
ment.

IX. On proof to the satisfaction of the Board of Trade of the completion of such publication as aforesaid, the Board of Trade shall, as soon as they conveniently can after the expiration of seven days from the completion of such publication in relation to any provisional order which shall have been published as aforesaid, not later than the twenty-fifth of April in any year procure a Bill to be introduced into either House of Parliament for an Act to confirm the provisional order, which shall be set out at length in the schedule to the Bill; but until confirmation by Act of Parliament a provisional order under this Act shall not have any operation.

If while any such Bill is pending in either House of Parliament a petition is presented against any provisional order comprised therein, the Bill, so far as it relates to the order petitioned against, may be referred to a select committee, and the petitioner shall be allowed to appear and oppose as in the case of a Bill for a special Act.

The Act of Parliament confirming any provisional order under this Act shall be deemed a Public General Act.

Incorpora-  
tion of ge-  
neral Acts  
in provi-  
sional  
order.

X. The provisions of The Lands Clauses Acts shall be incorporated with every provisional order under this Act, save where the same are expressly varied or excepted by any such provisional order, and except as to the following provisions, namely,—

- (1.) With respect to the purchase and taking of lands otherwise than by agreement:
- (2.) With respect to the entry upon lands by the promoters of the undertaking.

Where a provisional order authorises a gas undertaking the provisions of "The Gasworks Clauses Act 1847" shall be incorporated with such provisional order, save where the same are thereby expressly varied or excepted.

Where a provisional order authorises a water undertaking the provisions of "The Waterworks Clauses Act 1847" and of "The Waterworks Clauses Act 1863" shall be incorporated with such provisional order, save where the same are thereby expressly varied or excepted.

For the purposes of such incorporation a provisional order under this Act shall be deemed the special Act.



XI. If any undertakers empowered by any provisional order under this Act to make works do not, within three years from the date of such provisional order, or within any shorter period prescribed therein, complete the works ; or,

Cesser of powers at expiration of pre-scribed time.

If within one year from the date of the provisional order, or within such shorter time as is prescribed in the provisional order, the works are not substantially commenced ; or,

If the works are commenced, but whilst the powers to carry them on exist are suspended without a reason sufficient in the opinion of the Board of Trade to warrant such suspension ;

the powers given by the provisional order to the undertakers for executing such works, or otherwise in relation thereto, shall cease to be exercised, except as to so much of the same as is then completed, unless the time be prolonged by the special direction of the Board of Trade.

A statement in writing by the Board of Trade to the effect that such works have not been completed, or that the works have not been substantially commenced, or that they have been suspended without sufficient reason, shall be conclusive evidence for the purposes of this section of such non-completion non-commencement or suspension.

XII. The undertakers empowered by any provisional order under this Act may demand and take, in respect of gas or water supplied by them under the authority of such provisional order, rents and rates respectively not exceeding the sum specified in such provisional order, subject and according to the regulations therein specified.

Gas rents and water rates in schedule.

XIII. Nothing in any provisional order, or Act confirming the same, shall exempt the undertaking, or the company corporation or person to whom it belongs, from the provisions of any general Act of Parliament relating to gasworks or waterworks passed after the passing of this Act, or from any revision or alteration under the authority of Parliament of the maximum rents and rates allowed to be taken under the provisional order.

Company not exempt from provisions of general Act.

XIV. For the purpose of carrying into effect the provisions of this Act, it shall be lawful for Her Majesty at any time after the passing of this Act, by order in Council, to substitute for the Board of Trade any other department of her Majesty's Government, and from and after such time as may be specified for the purpose in any such order, or if no time be specified therein from and after the date of such order, all matters to be done in pursuance of this Act by or in connexion with the Board of Trade shall be done by or in connexion with such substituted department.

Queen in Council may substitute any department for Board of Trade for the purposes of this Act.

XV. This Act shall not apply to any place within the Metropolis, as the same is defined in the Metropolis Management Act 1855.

Act not to apply to Metropolis.

## SCHEDULE A.

Districts of Local Authorities.	Description of Local Authority of District set opposite its Name.
<i>England and Wales.</i>	
Boroughs (a) - - - - -	The mayor aldermen and burgesses acting by the council.
Any place other than a borough, and under the jurisdiction of commissioners trustees or other persons intrusted by any local Act with powers of improving cleansing or paving any town.	The commissioners trustees or other persons intrusted by the local Act with powers of improving cleansing or paving the town.
Any place not included in the above descriptions, and within the jurisdiction of local board constituted in pursuance of the Public Health Act 1848, and the Local Government Act 1858, or one of such Acts.	The local board.
Any place or parish not within the above descriptions, and in which a rate is levied for the maintenance of the poor.	The vestry select vestry or other body of persons, acting by virtue of any Act of Parliament prescription custom or otherwise, as or instead of a vestry or select vestry.
<i>Scotland.</i>	
* * * *	* * * *
<i>Ireland.</i>	
* * * *	* * * *

(a) "Borough" shall mean any place for the time being subject to an Act passed in the session holden in the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intituled "An Act to provide for the Regulation of Municipal Corporations in England and Wales."

## SCHEDULE B.

### PROVISIONAL ORDERS.

#### PART I.

*Advertisement in October or November of intended application.*

(1.) Every advertisement is to contain the following particulars :

1. The objects of the intended application.
2. A general description of the nature of the proposed new works (if any).
3. The names of the townlands parishes townships and extra-parochial places in which the proposed new works (if any) will be made.
4. The times and places at which the deposit under Part II. of this schedule will be made.
5. An office, either in London or at the place to which the intended application relates, at which printed copies of the draft provisional order when deposited, and of the provisional order when made, will be obtainable as hereinafter provided.

(2.) The whole notice is to be included in one advertisement, which is to be headed with a short title descriptive of the undertaking.

(3.) The advertisement is to be inserted once at least in each of two successive weeks in some one and the same newspaper published in the district affected by the proposed undertaking, where the proposed works (if any) will be made ; or if there be no such newspaper, then in some one and the same newspaper published in the county in which every such district, or some part thereof, is situate ; or if there be none, then in some one and the same newspaper published in some adjoining or neighbouring county.

(4.) The advertisement is also, in every case, to be inserted once at least in the London Edinburgh or Dublin Gazette, accordingly as the district is situate in England Scotland or Ireland.

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## PART II.

*Deposit on or before 30th November.*

(1.) The undertakers are to deposit—

1. A copy of the advertisement published by them.
2. If the application relates to gas, a map showing the land proposed to be used for the manufacture of gas, or of residual products arising in the manufacture of gas.
3. A proper plan and section of the proposed new works (if any), such plan and section to be prepared according to such regulations as may from time to time be made by the Board of Trade in that behalf.

(2.) The documents aforesaid are to be deposited for public inspection—

In England or Ireland, in the office of the clerk of the peace for every county riding or division; in Scotland, in the office of the principal sheriff clerk for every county district or division which will be affected by the proposed undertaking, or in which any proposed new work will be made.

(3.) The documents aforesaid are also to be deposited at the office of the Board of Trade.

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## PART III.

*Deposit on or before 23rd December.*

(1.) The undertakers are to deposit at the office of the Board of Trade—

1. A memorial signed by the undertakers, headed with a short title descriptive of the undertaking (corresponding with that at the head of the advertisement), addressed to the Board of Trade, and praying for a provisional order.
2. A printed draft of the provisional order as proposed by the undertakers, with any schedule referred to therein.
3. An estimate of the expense of the proposed new works (if any) signed by the persons making the same.

(2.) They are also to deposit a sufficient number of such printed copies at the office named in that behalf in the advertisement; such



copies to be there furnished to all persons applying for them at the price of not more than one shilling each.

(3.) The memorial of the undertakers (to be written on foolscap paper, bookwise, with quarter margin) is to be in the following form, with such variations as circumstances require :—

[*Short title of undertaking.*]

To the Board of Trade.

The memorial of the undertakers of [*short title of undertaking*] :  
Sheweth as follows :

1. Your memorialists have published, in accordance with the requirements of the Gas and Water Works Facilities Act 1870, the following advertisement :

[*Here advertisement to be set out verbatim.*]

2. Your memorialists have also deposited, in accordance with the requirements of the said Act, copies of the said advertisement and [*Here state deposit of the several matters required by Act*].

Your memorialists therefore pray that a provisional order may be made in the terms of the draft proposed by your memorialists, or in such other terms as may seem meet.

A.B.,

C.D.,

Undertakers.

#### PART IV.

##### *Deposit and advertisement of Provisional Order when made.*

(1.) The undertakers are to deposit printed copies of the provisional order, when settled and made, for public inspection in the offices of clerks of the peace and sheriff clerks, where the documents required to be deposited by them under Part II. of this schedule were deposited.

(2.) They are also to deposit a sufficient number of such printed copies at the office named in that behalf in the advertisement, such copies to be there furnished to all persons applying for them at the price of each.

(3.) They are also to publish the provisional order as an advertisement once in the local newspaper in which the original advertisement of the intended application was published.

36 & 37 VICT., c. 89.

An Act to extend and amend the provisions of the Gas and Water Works Facilities Act 1870. [5th August 1873.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

See section 161 of the Public Health Act 1875, and note, *supra*, p. 120.

Short  
title.

I. This Act may be cited for all purposes as "The Gas and Water Works Facilities Act, 1870, Amendment Act, 1873."

Interpre-  
tation.

II. In this Act the several words and expressions to which by "The Gas and Water Works Facilities Act, 1870," meanings are assigned, have the same respective meanings as in the said Act :

The expression "special Act" shall mean and include any local and personal Act conferring powers upon any local authority corporation commissioners company companies or persons, for the construction and maintenance or the maintenance and continuance of gasworks, and the manufacture and supply of gas in any district, and any Act amending the same, and shall include any provisional order made and confirmed under the authority of the "Gas and Water Works Facilities Act 1870," so far as such Act or provisional order is in force :

The expression "undertakers" in relation to a special Act shall mean the local authority corporation commissioners company companies or persons acting in execution of such special Act :

The expression "prescribed" shall mean prescribed by the special Act.

Cases to  
which Act  
applies.

III. This Act shall apply where the amendment of any special Act in force in any district is required by the undertakers or, subject as is in this Act hereinafter provided, by the local authority of such district in relation to all or any of the matters following :

- (1.) The illuminating power of the gas to be supplied ;
- (2.) The maximum price of the gas to be supplied :

(3.) The pressure at which the gas is to be supplied ;  
and such matters or any one or more of them, as the case may be,  
shall for the purposes of this Act be deemed to be included in the term  
“ amendment of a special Act.”

IV. Subject to the provisions of this Act, provisional orders making  
an amendment of a special Act may be obtained on the application of  
the undertakers, or of the local authority of any district in which the  
same is in force, made previous to the fifteenth day of February one  
thousand eight hundred and seventy-four.

Under-  
takers may  
obtain  
provisional  
orders  
from  
Board of  
Trade.

V. The undertakers or local authority intending to make an applica-  
tion for a provisional order in pursuance of this Act shall proceed as  
follows :—

Notices  
and de-  
posit of  
docu-  
ments as  
in sche-  
dule.

(1.) During the thirty days immediately preceding their application  
they shall publish notice of their intention to make such appli-  
cation by advertisement, according to the regulations contained  
in part one of the schedule to this Act:

(2.) On or before the fifth day after the last publication of such ad-  
vertisement they shall deposit the documents described in part  
two of the said schedule, according to the regulations therein  
contained.

VI. The Board of Trade shall consider the application, and inquire as  
to the propriety of proceeding upon such application, and they shall con-  
sider any objection thereto that may be lodged with them on or before  
such day as they from time to time appoint, and shall determine whether  
or not the application may be proceeded with.

Power for  
Board of  
Trade to  
determine  
on appli-  
cation and  
on objec-  
tion.

VII. Where, with a view to prevent undue loss to any undertakers  
arising from unusual increase in the cost of production of gas, or to the  
prevention of undue accumulation of profits by undertakers, it appears to  
the Board of Trade expedient and proper that the application should be  
granted, with or without addition or modification, or subject or not to  
any restriction or condition, and it has been proved to their satisfaction  
that all the requirements of this Act have been in all respects complied  
with, the Board of Trade may settle and make a provisional order ac-  
cordingly ; provided that the operation of such provisional order shall be  
limited to such period (not exceeding two years) as the Board shall there-  
in prescribe : provided also, that where any addition shall be made by  
any such provisional order to the maximum price of gas prescribed by  
the special Act, provision shall be made by such provisional order that  
the undertakers being a person company or companies carrying on busi-  
ness under the special Act for his or their own pecuniary benefit, shall  
not divide more than at the rate of five per cent. per annum on their  
ordinary capital for any half-year in which they shall have charged more

Power for  
Board of  
Trade to  
make pro-  
visional  
order.

than the maximum price prescribed by the special Act, or if such undertakers shall not have paid a dividend of five per cent. on such capital for each of the two financial years next preceeding the application, more than such sum as shall have been the average amount of the dividend in such two years, and before allowing any such addition the Board of Trade shall ascertain the amount of dividend paid on such capital during the said two years, the contracts (if any) for coal still in force, the present and former prices received by them for coke and residual products, the amount of gas unaccounted for and lost during each of the said two years, and their charges for gas during the same period.

Provisional orders made to be taken as valid.

VIII. Every provisional order made by the Board of Trade under the authority of this Act shall be signed by a secretary or assistant secretary of the Board of Trade, and shall take effect from a day subsequent to the date of the signing of the same to be named therein, (in this Act referred to as the commencement of such provisional order,) and every such order purporting to be so signed shall be conclusive evidence of every fact and circumstance necessary to authorise the making thereof, and shall be deemed and taken to all intents and purposes whatsoever to have been made in pursuance of and in conformity with the provisions of this Act; and so long as such provisional order shall continue in force, it shall be of the same force and effect as an Act of Parliament.

Provided always, that where an application under this Act has been made by any undertakers for the grant of a provisional order for the amendment of a special Act, it shall be lawful for the local authority of the district in which such special Act is in force, at any time before the fifteenth February one thousand eight hundred and seventy-four, to apply to the Board of Trade for the grant of a provisional order for the amendment of such special Act with respect to the illuminating power or the maximum price of the gas to be supplied by the undertakers, or with respect to the pressure at which such gas is to be supplied.

Provided also, that at any time during the continuance of any provisional order granted to any undertakers, it shall be lawful for the local authority of the district in which the same is in force to apply to the Board of Trade to revoke or amend such provisional order, and the Board of Trade may revoke or amend the same accordingly.

Publication of provisional order as in schedule.

IX. When a provisional order has been made as aforesaid, and delivered to the persons who applied for the same, they shall, before the day named for the commencement of such provisional order, deposit and publish the same by advertisement according to the regulations contained in part three of the schedule to this Act.

Confirmation of provisional

X. The Board of Trade shall, as soon as they conveniently can after the making of any provisional order under the authority of this Act,



procure a Bill to be introduced into either House of Parliament for an Act to confirm the provisional order, which shall be set out at length in the schedule to such Bill. order by  
Act of Par-  
liament.

If, while any such Bill is pending in either House of Parliament, a petition is presented against any provisional order comprised therein, the Bill, so far as it relates to the order petitioned against, may be referred to a select committee, and the petitioner shall be allowed to appear and oppose as in the case of a Bill for a local and personal Act.

In case either House of Parliament shall refuse to confirm any provisional order under this Act, notice of such refusal shall forthwith be given by the Board of Trade to the persons who applied for the same, and to the local authority of any district to which such provisional order relates, and the Board of Trade shall cause a copy of such notice to be published as an advertisement once in the local newspaper in which the original advertisement of the intended application was published, or in such other newspaper circulating in such district as the Board of Trade may think proper.

Every such notice shall be signed by a secretary or assistant secretary of the Board of Trade, and from and after the expiration of a date to be named therein the provisional order to which it relates shall cease to have any operation: provided always, that such notice shall not affect any act matter or thing done or suffered or any liability incurred under such provisional order, nor the effect and validity of such provisional order previous to the day named in such notice.

The production of a copy of such notice purporting to be signed in manner by this section prescribed shall be evidence of the facts stated therein.

The Act of Parliament confirming any provisional order under this Act shall be deemed a Public General Act.

XI. The costs of and connected with the preparation and making of a provisional order, and all proceedings in relation thereto, shall be paid by the persons applying for the same, and the Board of Trade may require them to give security for such costs before they proceed with the provisional order. Costs of  
order.

Such costs incurred by undertakers, being a company companies or person carrying on business under the special Act for their or his own pecuniary benefit, shall, if the same be not obtained, be paid out of the sum applicable to dividend, and if the same be obtained, shall be charged to ordinary expenses of management; and such costs incurred by any other undertakers may be paid by them out of any funds which may from time to time be in their hands, and which may be applicable to the purposes of the special Act; and such costs incurred by any local authority may be paid by them out of the borough rate or district rate

leviable by them for the purposes for which they are constituted by any general or special Acts.

Power of Board of Trade to revoke, amend, extend, or vary provisional order.

XII. Where under the Gas and Water Works Facilities Act, 1870, or this Act, the Board of Trade have made any provisional order, they may from time to time revoke amend extend or vary such provisional order by a further provisional order.

Every application for such further provisional order shall be made in like manner and subject to the like conditions as the application for the former provisional order.

Every such further provisional order shall be made and confirmed in like manner in every respect as the former provisional order.

Authorising and regulating inquiries by the Board of Trade for purposes of Gas and Water Works Facilities Act 1870, and this Act.

XIII. Where, in relation to any application for a provisional order under the Gas and Water Works Facilities Act 1870, or under this Act, it is in the opinion of the Board of Trade expedient that an inquiry should be held, they may order and direct such inquiry to be held at such time and place as they may think proper, subject to the provisions following :—

1. The inquiry shall be held in public before an officer or officers to be appointed in that behalf by the Board of Trade, herein-after called the Commissioners or Commissioners :
2. Ten days' notice at the least shall be given by the Commissioner or Commissioners of the time and place at which the inquiry is to be commenced :
3. The inquiry shall be commenced at the time and place so appointed, and the Commissioner or Commissioners may adjourn the inquiry from time to time as may be necessary to such time and place as he or they may think fit :
4. The Commissioner or Commissioners by summons shall, on the application of any party interested in the inquiry, require the attendance before him or them, at a place and time to be mentioned in the summons, of any person to be examined as a witness before him or them, and every person summoned shall attend the Commissioner or Commissioners, and answer all questions touching the matter to be inquired into, and any person who wilfully disobeys any such summons or refuses to answer any question put to him by the Commissioner or one of the Commissioners for the purposes of the said inquiry shall, on summary conviction before two justices, or in Scotland before any sheriff or sheriff substitute be liable to a penalty not exceeding five pounds : provided always, that no person shall be required to attend in obedience to any such summons unless the reasonable charges of his attendance shall have been paid or tendered to him, and no person shall be

required in any case in obedience to any such summons to travel more than ten miles from his place of abode :

5. The Commissioner or Commissioners shall make a report to the Board of Trade in writing, and shall deliver copies of the report upon request to all or any of the parties to the inquiry.

XIV. The Board of Trade may from time to time make, and, when made, may rescind annul or add to, rules with respect to the following matters :

Rules for carrying Acts into effect.

The proceedings to be had before the Board under the Gas and Water Works Facilities Act, 1870, or this Act ; and

As to any other matter or thing in respect of which it may be expedient to make rules for the purpose of carrying the said Act or this Act into execution.

Any rules made in pursuance of this section shall be deemed to be within the powers conferred by the said Act or this Act, and shall be of the same force as if enacted in the said Act or this Act, and shall be judicially noticed.

Any rules made in pursuance of this section shall be laid before Parliament within three weeks after they are made, if Parliament be then sitting, and if Parliament be not then sitting, within three weeks after the beginning of the then next session of Parliament.

XV. This Act shall not apply to any place within the Metropolis as the same is defined in "The Metropolis Management Act, 1855."

Act not to extend to Metro-  
polis.

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## SCHEDULE.

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### PART I.

#### ADVERTISEMENT OF INTENDED APPLICATION.

- (1.) Every advertisement is to contain the following particulars :

The objects of the intended application.

The name of an office, either in London or at the place to which the intended application relates, at which printed copies of the draft provisional order, when deposited, and of the provisional order when made, will be obtainable as hereinafter provided.

- (2.) The advertisement is to be inserted twice at least in some one and

the same newspaper published in the district affected by the proposed provisional order ; or if there be no such newspaper, then in some one and the same newspaper published in the county in which such district or some part thereof is situate ; or if there be none, then in some one and the same newspaper published in some adjoining or neighbouring county. Such advertisements shall be so published that there shall be an interval of not less than ten days between each publication.

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PART II.

(1.) The documents to be deposited at the office of the Board of Trade :—

1. A copy of each of the newspapers containing the advertisement.
2. A memorial signed by the persons applying for a provisional order, addressed to the Board of Trade, and praying for a provisional order.
3. A printed draft of the provisional order as proposed, with any schedule referred to therein.

(2.) A sufficient number of such printed copies are to be deposited at the office named in that behalf in the advertisement ; such copies to be there furnished to all persons applying for them at the price of not more than one shilling each.

(3.) The said memorial (to be written on foolscap paper, bookwise, with quarter margin) is to be in the following form, with such variations as circumstances require :—

*[Short title of undertaking.]*

To the Board of Trade.

The memorial of \_\_\_\_\_ of \_\_\_\_\_ :  
Showeth as follows :

1. Your memorialists have published, in accordance with the requirements of the Gas and Water Works Facilities Act, 1870, Amendment Act, 1873, the following advertisement :

*[Here advertisement to be set out verbatim.]*



2. Your memorialists have also deposited, in accordance with the requirements of the said Act, copies of the said advertisement and [*Here state deposit of the several matters required by Act*].

Your memorialists therefore pray that a provisional order may be made in the terms of the draft proposed by your memorialists, or in such other terms as may seem meet.

*A.B.*

*C.D.*

*E.F.*

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PART III.

DEPOSIT AND ADVERTISEMENT OF PROVISIONAL ORDER WHEN MADE.

(1.) The provisional order shall be published as an advertisement once in the local newspaper in which the original advertisement of the intended application was published, or in such other newspaper circulating in the district to which such provisional order relates as the Board of Trade shall direct.

(2.) A sufficient number of printed copies of the provisional order shall be deposited at the office named in that behalf in the advertisement, such copies to be there furnished to all persons applying for them at the price of not more than one shilling each.

## 35 &amp; 36 VICT., c. 111.

An Act to authorise the application of Funds of Municipal Corporations and other governing bodies in certain cases.

[10th August 1872.]

The object of this Act is explained in the preamble. A recital to the effect that the provisions of section 4 have been complied with is required to be introduced into every Bill, the expenses of promoting which are intended to be paid or charged under this Act.

20 & 21  
Vict. c. 50.

**W**HEREAS by the Act passed in the session holden in the twentieth and twenty-first years of the reign of Her Majesty, intituled an Act to amend the Acts concerning the Municipal Corporations, the trustees acting under any Act of Parliament for supplying any borough, or any district within or in certain cases beyond the limits of a borough, with water or gas, or having powers for providing or maintaining any cemetery or market in or for any borough, or otherwise improving the same, are authorised and empowered to transfer to the body corporate of such borough all their rights estates properties and liabilities :

And whereas by the ninety-second section of the Act passed in the session holden in the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, to provide for the regulation of Municipal Corporations in England and Wales, in each borough the annual proceeds of all property and hereditaments belonging to the body corporate, and fines and rates levied in the borough, are directed to form the borough fund, and such fund is directed to be applied in the payment of certain salaries and certain expenses and the expenses necessarily incurred in carrying into effect the provisions of the said Act, and the surplus (if any) of such fund is directed to be applied, under the direction of the council, for the public benefit of the inhabitants and the improvement of the borough :

And whereas the Public Health Act 1848, the Local Government Act 1858, and various Local Acts of Parliament, have conferred powers of improving cleansing paving lighting, and otherwise governing places or districts upon boards of health commissioners trustees or other persons :

And whereas it is expedient to extend the powers of governing bodies so as to enable them to apply the borough or other funds under the control of such governing body towards such costs charges and expenses as may be incurred for the purposes and in the manner herein provided :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

I. The term "governing body" in this Act shall mean the council of any municipal borough the board of health local board commissioners trustees or other body acting under any general or local Act of Parliament for the management improvement cleansing paving lighting, and otherwise governing places or districts, and the term "district" shall mean the borough place township or district within which the governing body may for the time being have jurisdiction : Provided, however, that in the borough of Cambridge, in any matters affecting the constitution power or functions of the Board of Cambridge Improvement Commissioners, as defined in the several Acts of Parliament relating thereto, the term "governing body" shall mean such board of improvement commissioners, and not the council of the borough of Cambridge.

Interpretation of terms.

II. When in the judgment of a governing body in any district it is expedient for such governing body to promote or oppose any local and personal Bill or Bills in Parliament, or to prosecute or defend any legal proceedings necessary for the promotion or protection of the interests of the inhabitants of the district, it shall be lawful for such governing body to apply the borough fund borough rate or other the public funds or rates under the control of such governing body to the payment of the costs and expenses attending the same ; and when there are several funds or rates under the control of the governing body, such governing body shall determine out of which fund or funds, rate or rates, such expense shall be payable, and in what proportions : Provided that nothing in this Act contained shall authorise any governing body to promote any Bill in Parliament for the establishment of any gas or water works to compete with any existing gas or water company established under any Act of Parliament : Provided that no powers contained in this clause shall apply in any case where the promotion of or opposition to a Bill by a governing body has been decided by a Committee of either House of Parliament to be unreasonable or vexatious.

Costs of promoting or opposing parliamentary and other proceedings for benefit of inhabitants to be charge on borough and local funds, except in certain cases.

III. No payment to any member of a governing body for acting as counsel or agent in promoting or opposing any such Bill shall be charged as aforesaid.

No payment to member of governing body to be so charged.

IV. No expense in relation to promoting or opposing any Bill or Bills in Parliament shall be charged as aforesaid unless incurred in pursuance of a resolution of an absolute majority of the whole number of the governing body at a meeting of the governing body, after ten clear days' notice by public advertisement of such meeting and of the purpose

Costs of promoting or opposing Bills to require sanction.

of special  
meetings.

thereof in some local newspaper published or circulating in the district, such notice to be in addition to the ordinary notices required for summoning such meeting, nor unless such resolution shall have been published twice in some newspaper or newspapers circulating in the district, and shall have received, in respect of matters within the jurisdiction of the Local Government Board, the approval of such Board, and in respect of other matters, the approval of one of Her Majesty's Secretaries of State, and in case of the promotion of a Bill in Parliament no further expense shall be incurred or charged as aforesaid after the deposit of the Bill, unless the propriety of such promotion shall be confirmed by such absolute majority at a further special meeting to be held in pursuance of a similar notice not less than fourteen days after the deposit of the Bill in Parliament: Provided further, that no expense in promoting or opposing any Bill in Parliament shall be charged as aforesaid unless such promotion or opposition shall have had the consent of the owners and ratepayers of that district, to be expressed by resolution in the manner provided in the Local Government Act (1858) for the adoption of that Act.

Proviso  
as to  
approval  
of Local  
Govern-  
ment  
Board etc.  
to any such  
resolution.

V. The approval of the Local Government Board or one of Her Majesty's Principal Secretaries of State, as the case may be, shall not be given to any such resolution as aforesaid until the expiration of seven days after the second publication thereof, as provided by this Act, and in the meantime any ratepayer within the district of the governing body may give notice in writing to the Local Government Board or Secretary of State objecting to such approval.

Costs to be  
examined.

VI. All costs charges and expenses incurred under the provisions of this Act shall, before the same become chargeable, be examined and allowed by some person to be authorised by one of Her Majesty's Principal Secretaries of State or by the Local Government Board, as the case may be.

Power to  
direct  
local  
inquiry.

VII. The Local Government Board, or one of Her Majesty's Principal Secretaries of State, shall have power to direct a local inquiry to be held upon any application under this Act, by any person or persons whom they may respectively nominate for the purpose, and to charge the costs and expenses of such local inquiry upon the governing body or the person by whom such application shall be made.

Saving  
clause.

VIII. Nothing in this Act shall extend or be construed to alter or affect any special provision which is or shall be contained in any other Act for the payment of the costs charges and expenses intended to be provided for by this Act, or to take away or diminish any rights or powers now possessed or enjoyed by any governing body, or which are



or shall be vested in or exerciseable by the inhabitants of any district under any general or special Act.

IX. The one hundred and forty-second section of "The Towns Improvement Clauses Act 1847," is hereby repealed so far as the same is inconsistent with the provisions of this Act.

X. The provisions of this Act shall not extend to applications for any Bill in Parliament for any object which would, for the time being, be attainable by Provisional Order.

XI. This Act shall not extend or apply to Ireland or the city of London or the metropolitan area as defined by the Metropolitan Local Management Act 1855.

Towns Improvement Clauses Act 1847, s. 142, repealed.

Act not to extend to Bills if object attainable by provisional order.

Act not to apply to the Metropolis.

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38 & 39 VICT. c. 36.

An Act for facilitating the Improvement of the Dwellings of the Working Classes in Large Towns.

[29th June 1875.]

This Act enables the local authorities for the districts described in section 2, on the representation of the medical officer of health that an area within their jurisdiction is an unhealthy area (see sect. 3), to frame and carry into execution a scheme for its improvement by the re-arrangement and reconstruction of the streets and houses in such area, and for that purpose to acquire lands compulsorily. The scheme must provide for the accommodation of at least as many persons of the working class as may be displaced, and for proper sanitary arrangements. It requires confirmation by a provisional order made (as respects any area in the metropolis) by a Secretary of State, and (as respects any area in an urban sanitary district) by the Local Government Board; and on the passing of the Act confirming the provisional order, it becomes the duty of the local authority to carry the scheme into execution as soon as practicable. Borrowing powers for the purposes of the Act are conferred by section 22. It is to be observed that the Schedule modifies the provisions of the Lands Clauses Act 1845, in some important particulars, and requires the compensation for lands taken compulsorily to be determined in case of dispute by an arbitrator appointed by the confirming authority.

WHEREAS various portions of many cities and boroughs are so built, and the buildings thereon are so densely inhabited, as to be highly injurious to the moral and physical welfare of the inhabitants:

And whereas there are in such portions of cities and boroughs as

aforesaid a great number of houses, courts, and alleys which, by reason of the want of light, air, ventilation, or of proper conveniences, or from other causes, are unfit for human habitation, and fevers and diseases are constantly generated there, causing death and loss of health, not only in the courts and alleys but also in other parts of such cities and boroughs :

And whereas it often happens that owing to the above circumstances, and to the fact that such houses courts and alleys are the property of several owners, it is not in the power of any one owner to make such alterations as are necessary for the public health :

And whereas it is necessary for the public health that many of such houses courts and alleys should be pulled down, and such portions of the said cities and boroughs should be reconstructed :

And whereas in connexion with the reconstruction of those portions of such cities and boroughs it is expedient that provision be made for dwellings for the working class who may be displaced in consequence thereof :

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

*Preliminary.*

Short  
title.

I. This Act may be cited for all purposes as "The Artizans and Labourers Dwellings Improvement Act 1875."

Applica-  
tion of  
Act to  
certain  
districts,  
and de-  
scription  
of local  
authority.

II. This Act shall apply only to

(1.) The City of London ; and

(2.) The Metropolis, exclusive of the City of London ; and

(3.) Urban sanitary districts in England containing, according to the last published Census, for the time being a population of twenty-five thousand and upwards ;

(4.) Urban sanitary districts in Ireland containing, according to the last published Census, a population of twenty-five thousand and upwards ;

and the local authority shall be as follows ; that is to say,—

(1.) As respects the City of London, the Commissioners of Sewers ;  
and

(2.) As respects the Metropolis, the Metropolitan Board of Works ;  
and

(3.) As respects each urban sanitary district, the urban sanitary authority of that district.

PART I.

UNHEALTHY AREAS.

1. *Scheme by Local Authority.*

III. Where an official representation as hereinafter mentioned is made to the local authority that any houses courts or alleys within a certain area under the jurisdiction of the local authority are unfit for human habitation, or that diseases indicating a generally low condition of health amongst the population have been from time to time prevalent in a certain area within the jurisdiction of the local authority, and that such prevalence may reasonably be attributed to the closeness narrowness and bad arrangement or the bad condition of the streets and houses or groups of houses within such area, or to the want of light air ventilation or proper conveniences, or to any other sanitary defects, or to one or more of such causes, and that the evils connected with such houses courts or alleys, and the sanitary defects in such area, cannot be effectually remedied otherwise than by an improvement scheme for the re-arrangement and reconstruction of the streets and houses within such area, or of some of such streets or houses, the local authority shall take such representation into their consideration, and if satisfied of the truth thereof, and of the sufficiency of their resources, shall pass a resolution to the effect that such area is an unhealthy area, and that an improvement scheme ought to be made in respect of such area, and after passing such resolution they shall forthwith proceed to make a scheme for the improvement of such area.

Local authority on being satisfied by official representation of the unhealthiness of district to make scheme for its improvement.

Provided always, that no person being beneficially interested in any lands within such area shall vote as member of the local authority upon such resolution, or upon any question relating to the purchase or taking of lands in which he is so interested.

If any person votes in contravention of this proviso, he shall, on summary conviction, incur a penalty not exceeding twenty pounds; but the fact of his giving such vote shall not invalidate any resolution passed by the local authority.

Provided always that any number of such areas may be included in one improvement scheme.

IV. An official representation shall mean, in the Metropolis, a representation made by the medical officer of health of any district board or vestry, or by such medical officer as is hereafter in this Act mentioned, to the local authority, and elsewhere shall mean a representation made to the local authority by the medical officer of health of such authority. A medical officer acting in pursuance of this Act shall make such representation whenever he sees cause to make the same; and if two or more

Official representation by whom to be made.

justices of the peace acting within the jurisdiction for which he is medical officer, or twelve or more persons liable to be rated to any rate out of the proceeds of which the expenses of the local authority under this Act are made payable, complain to him of the unhealthiness of any area within such jurisdiction, it shall be the duty of the officer forthwith to inspect such area, and to make an official representation stating the facts of the case, and whether in his opinion the area is an unhealthy area or not an unhealthy area, for the purposes of this Act.

Requisites  
of im-  
prove-  
ment  
scheme of  
local  
authority.

V. The improvement scheme of a local authority shall be accompanied by maps, particulars, and estimates; it may exclude any part of the area in respect of which an official representation is made, or include any neighbouring lands, if the local authority are of opinion that such exclusion is expedient or inclusion is necessary for making their scheme efficient for sanitary purposes; it may also provide for widening any existing approaches to the unhealthy area or otherwise for opening out the same for the purposes of ventilation or health; also it shall distinguish the lands proposed to be taken compulsorily, and shall provide for the accommodation of at the least as many persons of the working class as may be displaced in the area with respect to which the scheme is proposed, in suitable dwellings, which, unless there are any special reasons to the contrary, shall be situate within the limits of the same area, or in the vicinity thereof; it shall also provide for proper sanitary arrangements. It may also provide for such scheme or any part thereof being carried out and effected by the person entitled to the first estate of freehold in any property subject to the scheme or with the concurrence of such person, under the superintendence and control of the local authority, and upon such terms and conditions to be embodied in the scheme as may be agreed upon between the local authority and such person.

## 2. *Confirmation of Scheme.*

Improve-  
ment  
scheme by  
provi-  
sional  
order to  
be con-  
firmed by  
parlia-  
ment.  
Publica-  
tion of  
notices.

VI. Upon the completion of an improvement scheme the local authority shall—

Publish, during three consecutive weeks in the month of September, or October, or November, in some one and the same newspaper circulating within the jurisdiction of the local authority, an advertisement stating the fact of a scheme having been made, the limits of the area to which the scheme relates, and naming a place within such area or in the vicinity thereof where a copy of the scheme may be seen at all reasonable hours; and,

Service  
of notices.

During the month next following the month in which such advertisement is published serve a notice on every owner or reputed owner, lessee or reputed lessee, and occupier of any lands proposed to be taken



compulsorily, so far as such persons can reasonably be ascertained, stating that such lands are proposed to be taken compulsorily for the purpose of an improvement scheme, and in the case of any owner or reputed owner, lessee or reputed lessee, requiring an answer stating whether the person so served dissents or not in respect of taking such lands, such notice to be served—

- (a.) By delivery of the same personally to the person required to be served, or if such person is absent abroad, or cannot be found, to his agent, or if no agent can be found, then by leaving the same on the premises; or
- (b.) By leaving the same at the usual or last known place of abode of such person as aforesaid; or,
- (c.) By forwarding the same by post in a prepaid letter addressed to the usual or last known place of abode of such person.

One notice addressed to the occupier or occupiers without naming him or them, and left at any house, shall be deemed to be a notice served on the occupier or on all the occupiers of any such house.

Upon compliance with the provisions contained in this section with respect to the publication of an advertisement and the service of notices, the local authority shall present a petition, if such authority be the Commissioners of Sewers or the Metropolitan Board of Works to a Secretary of State, and if such authority be an urban sanitary authority to the Local Government Board, praying that an order may be made confirming such scheme. The petition shall be accompanied by a copy of the scheme, and shall state the names of the owners or reputed owners, lessees or reputed lessees, who have dissented in respect of the taking their lands, and shall be supported by such evidence as the Secretary of State or Local Government Board, according to the circumstances of the case (in this Act referred to as the confirming authority), may from time to time require :

Petition  
to  
Secretary  
of State  
or Local  
Govern-  
ment  
Board.

If, on consideration of the petition and on proof of the publication of the proper advertisements and the service of the proper notices, the confirming authority think fit to proceed with the case, they shall direct a local inquiry to be held in, or in the vicinity of, the area to which the scheme relates, for the purpose of ascertaining the correctness of the official representation made as to the area and the sufficiency of the scheme provided for its improvement, and any local objections to be made to such scheme :

After receiving the report made upon such inquiry, the confirming authority may make a provisional order declaring the limits of the area to which the scheme relates, and authorising such scheme to be carried into execution. Such provisional order may be made either absolutely or with such conditions and modifications of the scheme as the confirming authority may think fit, so that no addition be made to the lands pro-

posed in the scheme to be taken compulsorily, and it shall be the duty of the local authority to serve a copy of any provisional order so made in the manner and upon the persons in which and upon whom notices in respect of lands proposed to be taken compulsorily are required by this Act to be served, except tenants for a month or a less period than a month.

A provisional order made in pursuance of this section shall not be of any validity until and unless it has been confirmed by Act of Parliament; and it shall be lawful for the confirming authority, as soon as conveniently may be, to obtain such confirmation, and any provisional order made in pursuance of this Act, when confirmed by Parliament, with such modifications as may seem fit to Parliament, shall be deemed to be a Public General Act of Parliament, and is in this Act referred to as the confirming Act.

The confirming authority may make such order as they think fit in favour of any person whose lands were proposed by the scheme to be taken compulsorily for the allowance of the reasonable costs charges and expenses properly incurred by him in opposing such scheme.

All costs charges and expenses incurred by the confirming authority in relation to any provisional order under this Act shall, to such amount as the confirming authority think proper to direct, and all costs charges and expenses of any person to such amount as may be allowed to him by the confirming authority in pursuance of the aforesaid power, shall be deemed to be an expense incurred by the local authority under this Act, and shall be paid to the confirming authority and to such person respectively, in such manner and at such times and either in one sum or by instalments as the confirming authority may order, with power for the confirming authority to direct interest to be paid at such rate not exceeding five pounds in the hundred by the year as the confirming authority may determine, upon any sum for the time being due in respect of such costs charges and expenses as aforesaid.

Any order made by the confirming authority in pursuance of this section may be made a rule of one of Her Majesty's superior courts, and be enforced accordingly.

Costs to be  
awarded  
in certain  
cases.

VII. Where any Bill for confirming a provisional order authorising an improvement scheme is referred to a Committee of either House of Parliament upon the petition of any person opposing such Bill, the Committee shall take into consideration the circumstances under which such opposition is made to the Bill, and whether such opposition was or was not justified by such circumstances, and shall award costs accordingly to be paid by the promoters or the opponents of the Bill as the Committee may think just.

Any costs under this section may be taxed and recovered in the manner in which costs may be taxed and recovered under the Act of the session

of the twenty-eighth and twenty-ninth years of the reign of Her present Majesty, chapter twenty-seven.

The decision of the majority of the members of the Committee for the time being present and voting on any question under this section shall be deemed to be the decision of the Committee.

VIII. Where an official representation is made to the local authority with a view to their passing a resolution in favour of an improvement scheme, and they fail to pass any resolution in relation to such representation, or pass a resolution to the effect that they will not proceed with such scheme, such local authority shall, as soon as possible, send a copy of the official representation, accompanied by their reasons for not acting upon it, to the confirming authority, and, upon the receipt thereof, the confirming authority may direct a local inquiry to be held, and a report to be made to them with respect to the correctness of the official representation made to the local authority, and any matters connected therewith on which the confirming authority may desire to be informed.

Inquiry on refusal of local authority to make an improvement scheme.

### 3. *Execution of Scheme by Local Authority.*

IX. When the confirming Act authorising any improvement scheme of a local authority under this Act has been passed by Parliament, it shall be the duty of that authority to take steps for purchasing the lands required for the scheme, and otherwise for carrying the scheme into execution as soon as practicable. They may sell or let all or any part of the area to which such scheme relates to any purchasers or lessees for the purposes and under the condition that such purchasers or lessees will, as respects the lands so purchased by or leased to them, carry the scheme into execution; and in particular they may insert in any grant or lease of any part of the area provisions binding the grantee or lessee to build thereon as in the grant or lease prescribed, and to maintain and repair the buildings, and prohibiting the division of buildings, and any addition to or alteration of the character of buildings without the consent of the local authority, and for the re-vesting of the land in the local authority, or their re-entry thereon, on breach of any provision in the grant or lease. The local authority may also engage with any body of trustees, society or societies, persons or person, to carry the whole or any part of such scheme into effect upon such terms as the local authority may think expedient, but the local authority shall not themselves, without the express approval of the confirming authority, undertake the rebuilding of the houses or the execution of any part of the scheme, except that they may take down any or all of the buildings upon the area, and clear the whole or any part thereof, and may lay out, form, pave, sewer, and complete all such streets laid upon the land purchased by them as they

Duty of local authority to carry scheme, when confirmed, into execution.



think fit, and all streets so laid out and completed shall thenceforth be public streets, repairable by the same authority as other streets in the district.

Provided in any grant or lease of any part of the area which may be appropriated by the scheme for the erection of dwellings for the working classes, the local authority shall impose suitable conditions and restrictions as to the elevation, size, and design of the houses, and the extent of the accommodation to be afforded thereby, and shall make due provision for the maintenance of proper sanitary arrangements.

Provided also, that in any case in which the local authority erect any dwellings out of funds to be provided under this Act, they shall, unless the confirming authority shall otherwise determine, sell and dispose of all such dwellings within ten years from the time of the completion thereof.

The local authority may, where they think it expedient so to do, without themselves acquiring the land, or after or subject to their acquiring any part thereof, contract with the person entitled to the first estate of freehold in any land comprised in an improvement scheme for the carrying out of the scheme in respect of such land by such person.

Comple-  
tion of  
scheme on  
failure by  
local  
authority.

X. If within five years after the removal of any buildings on the land set aside by any provisional order as sites for working men's dwellings the local authority have failed to sell or let such land for the purposes prescribed by the scheme, or have failed to make arrangements for the erection of the said dwellings, the confirming authority may order the said land to be sold by public auction or public tender, with full power to fix a reserve price, subject to the conditions imposed by the scheme, and to any modifications thereof which may be made in pursuance of this Act, and to a special condition on the part of the purchaser to erect upon the said land dwellings for the working classes, in accordance with plans to be approved by the local authority, and subject to such other reservations and regulations as the confirming authority may deem necessary.

Notice to  
occupiers  
by  
placards.

XI. The local authority shall, not less than thirteen weeks before taking any fifteen houses or more, make known their intention to take the same by placards, handbills, or other general notices placed in public view upon or within a reasonable distance of such houses, and the local authority shall not take any such houses until they have obtained a certificate of a justice of the peace that it has been proved to his satisfaction that the local authority have made known, in manner required by this section, their intention to take such houses.

Power  
of con-  
firming

XII. The confirming authority, on application from the local authority, and on its being proved to their satisfaction that an improvement can be



made in the details of any scheme, and that due provision has been made or secured for the accommodation in suitable dwellings of as many persons of the working class as may be displaced in the area to which such scheme relates, either in manner provided by the scheme or in some other manner, or will be more advantageously made or secured under the proposed alteration, may permit the local authority to modify any part of an improvement scheme authorised by the confirming Act which it may appear inexpedient to carry into execution in accordance with such Act.

authority  
to modify  
authorised  
scheme. •

A statement of any modifications permitted to be made in any part of an improvement scheme in pursuance of this section shall be laid by the confirming authority before both houses of Parliament as soon as practicable after they are made, if Parliament be then sitting, and if not, within one month after the next meeting of Parliament: Provided always, that if such modification or alteration shall require a larger public expenditure than that sanctioned by the former scheme, or the taking of any property otherwise than by agreement, or shall affect injuriously other property in a manner different to that proposed in the former scheme without the consent of the owner and occupier of any such property, it must be made by a provisional order to be confirmed by Act of Parliament in the manner provided in section six of this Act on the completion of an improvement scheme.

## PART II.

### PROVISIONS ANCILLARY TO IMPROVEMENT SCHEME.

#### *As to Local Authority.*

##### 1. *Medical Officer.*

XIII. The Metropolitan Board of Works may, with the assent of a Secretary of State, at any time appoint one or more legally qualified medical practitioner or practitioners, with such remuneration as they think fit, for the purpose of better carrying into effect this Act in the Metropolis. Any officer so appointed by the Metropolitan Board of Works shall be deemed to be a medical officer of health of a local authority within the meaning of this Act, and shall perform the duties and be subject to the liabilities which such medical officer is by this Act required to perform and be subject to.

Medical  
officer of  
health in  
metro-  
polis.

XIV. In case of the illness or unavoidable absence of the medical officer of health, the district board vestry or local authority, as the case may be, may (subject to the approval of the confirming authority) appoint a duly qualified medical practitioner, who shall for the period of six

Provision  
in case of  
absence of  
medical  
officer of  
health.

calendar months, or any less period to be named in the appointment, have and perform all the powers and duties of a medical officer of health under this Act.

Inquiry on  
default of  
medical  
officer in  
certain  
cases.

XV. Where twelve or more ratepayers have complained to a medical officer of the unhealthiness of any area within the jurisdiction of such officer, and the medical officer has failed to inspect such area, or to make an official representation with respect thereto, or has made an official representation to the effect that in his opinion the area is not an unhealthy area, such ratepayers may appeal to the confirming authority, and, upon their giving security to the satisfaction of that authority for costs, the confirming authority shall appoint a medical officer to inspect such area and to make representation to the confirming authority, stating the facts of the case, and whether, in his opinion, the area is an unhealthy area or not an unhealthy area. The representation so made shall be transmitted to the confirming authority to the local authority, and if it state that the area is an unhealthy area the local authority shall proceed therein in the same manner as if it were an official representation made to that authority.

The confirming authority shall make such order as to the costs of the inquiry as they think just, with power to require the whole or any part of such costs to be paid by the appellants where the officer appointed is of opinion that the area is not an unhealthy area, and to declare the whole or any part of such costs to be payable by the local authority where such officer is of opinion that the area is an unhealthy area.

Any order made by the confirming authority in pursuance of this section may be made a rule of one of Her Majesty's superior courts, and be enforced accordingly.

## 2. *Local Inquiry.*

Proceed-  
ings on  
local  
inquiry.

XVI. Where a local inquiry is directed, an officer shall be sent by the confirming authority to the area to which such inquiry relates for the purpose of making an inquiry into the correctness of the official representation made to the local authority as to such area being an unhealthy area, and into the sufficiency of the scheme provided for its improvement, and into any local objections to be made to such scheme.

Notice of  
inquiry  
to be  
publicly  
given.

XVII. Before commencing such inquiry the officer appointed to conduct the same shall make public by advertisement or otherwise in such manner as he thinks best calculated to give information to the persons residing in the area his intention to make such inquiry, and a statement of a time and place at which he will be prepared to hear all persons desirous of being heard before him upon the subject of the inquiry.

XVIII. The officer conducting such inquiry shall have power to administer an oath; he shall report the result of the inquiry to the confirming authority, who shall deal with such report in such manner as they think expedient. Power to administer oath.

### 3. *Acquisition of Land.*

XIX. (1.) The clauses of the Lands Clauses Consolidation Act, 1845, with respect to the purchase and taking of lands otherwise than by agreement shall not, except to the extent set forth in the schedule hereto, apply to any lands taken in pursuance of this Act, but save as aforesaid the said Lands Clauses Consolidation Act 1845, and the Lands Clauses Consolidation Acts Amendment Act 1860, as amended by the provisions contained in the schedule hereto, shall regulate and apply to the purchase and taking of lands in England, and shall for that purpose be deemed to form part of this Act in the same manner as if they were enacted in the body thereof; and (2.) "The Lands Clauses Consolidation Act 1845," as amended by "The Lands Clauses Consolidation Act 1860," "The Railways Act (Ireland) 1851," "The Railways Act (Ireland) 1860," "The Railways Act (Ireland) 1864," and "The Railways Traverse Act," shall, subject to the provisions following, regulate and apply to the purchase and taking of lands in Ireland, and shall for this purpose be deemed to form part of this Act, in the same manner as if they were enacted in the body hereof, Acquisition of land.

Subject, as respects both England and Ireland, to the provisions following; that is to say,

(1.) This Act shall authorise the taking by agreement any lands which the local authority may require for the purpose of carrying into effect the scheme authorised by any confirming Act, but it shall authorise the taking by the exercise of any compulsory powers of such lands only as are proposed by the scheme in the confirming Act to be taken compulsorily:

(2.) Whenever the compensation payable in respect of any lands or of any interests in any lands proposed to be taken compulsorily in pursuance of this Act requires to be assessed, the estimate of the value of such lands or interests shall be based upon the fair market value, as estimated at the time of the valuation being made of such lands, and of the several interests in such lands, due regard being had to the nature and then condition of the property, and the probable duration of the buildings in their existing state, and to the state of repair thereof, and all circumstances affecting such value, without any additional allowance in respect of the compulsory purchase of an area or of any part of an area in respect of which an official representation has been made, or of any lands which in the opinion



of the arbitrator have been included in a scheme as falling under the description of property named in the third section of this Act :

- (3.) In the construction of the said Lands Clauses Consolidation Acts, and the provisions of the said schedule, this Act shall be deemed to be the special Act, and the local authority shall be deemed to be the promoters of the undertaking; and the period after which the powers for the compulsory purchase or taking of lands shall not be exercised shall be three years after the passing of the confirming Act.

Extinction of rights of way and other easements.

XX. Upon the purchase by the local authority of any lands required for the purpose of carrying into effect any scheme authorised by a confirming Act, all rights of way, rights of laying down or of continuing any pipes, sewers, or drains on, through, or under such lands, or part thereof, and all other rights or easements in or relating to such lands, or any part thereof, shall be extinguished, and all the soil of such ways, and the property in the pipes, sewers, or drains, shall vest in the local authority, subject to this provision, that compensation shall be paid by the local authority to any persons or bodies of persons proved to have sustained loss by this section, and such compensation shall be determined in the manner in which compensation for lands is determinable under this Act, or as near thereto as circumstances admit.

#### 4. *Expenses.*

Formation of improvement fund for purposes of this Act.

XXI. A separate account shall be kept by the local authority of their receipts and expenditure in respect of any transactions under this Act. Their receipts shall form a fund (in this Act referred to as "The Dwelling-house Improvement Fund"), and their expenditure shall be made out of such fund.

The moneys required in the first instance to establish such fund, and any deficiency for the purposes of this Act from time to time appearing in such fund by reason of the excess of expenditure over receipts, shall be supplied out of the local rates or out of moneys borrowed in pursuance of this Act.

In settling any accounts of the local authority in respect of any transactions under this Act, care shall be taken that as far as may be practicable all expenditure shall ultimately be defrayed out of the property dealt with under this Act; and any balances of profit made by the local authority under this Act shall be applicable to any purposes to which the local rates are for the time being applicable.

The local rates shall, in the case of the Commissioners of Sewers, mean the sewer rate and the consolidated rate leviable by such Commissioners, or either of such rates.



The Metropolitan Board of Works shall levy as part of the metropolitan consolidated rate within the area of the metropolis, without making any demand on the city of London, a sufficient amount for the purposes of this Act, and the part so levied shall, for the purposes of this Act, in the case of the Metropolitan Board of Works, be referred to and included under the expression "local rates."

The "local rates" shall in the case of an urban sanitary authority mean all or any rates or rate levied throughout the district of such authority, and out of which the local authority is authorised to pay any expenses incurred under the Sanitary Acts, as defined by the Public Health Act 1872, and by the Public Health (Ireland) Act 1874.

The local authority may carry to the account of the Dwelling-house Improvement Fund any moneys or the produce of any property, which moneys or produce are or is legally applicable to purposes similar to the purposes of this Act; and in case of doubt as to whether, in any particular case, the purposes are similar to the purposes of this Act; it shall be lawful for the confirming authority to decide such question, and such decision shall be conclusive.

XXII. Any local authority under this Act may for the purposes of this Act borrow any moneys on the security of any lands, houses, or other property acquired by them under this Act, and may mortgage such lands houses or other property to any person advancing such moneys, and it shall not be in any way incumbent on the mortgagees to see to the application of such moneys, nor shall they be responsible for the misapplication thereof.

Power of borrowing money for the purposes of the Act.

Every local authority borrowing on the credit of such lands houses or other property as aforesaid may pay out of local rates the interest of any moneys so borrowed by them.

Any local authority under this Act borrowing any moneys on the security of any lands houses or other property as aforesaid may execute such instruments by way of security, with such power of sale and other conditions as they think expedient.

An urban sanitary authority shall have the same power of borrowing on the credit of the local rates such sums of money as they may require for the purposes of this Act as they have under section forty of the Public Health Act 1872, or under the Public Health (Ireland) Act 1874, for sanitary purposes.

The Commissioners of Sewers may borrow and take up at interest such money on the credit of the local rates, or any of them, as they may require for the purposes of this Act, and may mortgage any such rate or rates to the persons by or on behalf of whom such money is advanced for securing the repayment to them of the sums borrowed, with interest thereon, and for the purposes of any mortgages so made by the Commissioners of Sewers the clauses of the Commissioners Clauses Act 1847,

with respect to the mortgages to be executed by the commissioners shall be incorporated with this Act; and in the construction of that Act "the special Act" shall mean this Act; "the commissioners" shall mean the Commissioners of Sewers; "the clerk of the commissioners" shall include any officer appointed for the purpose by the Commissioners of Sewers by this Act; and the mortgagees or assignees of any mortgage made as last aforesaid may enforce payment of the arrears of principal and interest due to them by the appointment of a receiver.

The Metropolitan Board of Works may, with the assent of the Treasury, create consolidated stock under the Metropolitan Board of Works (Loans) Act, 1869, for the purpose of raising sums as they may require for the purposes of this Act, but there shall be repaid to the consolidated rate out of the local rate all moneys required for payment of the dividends on and the redemption of the consolidated stock created for the purposes of this Act.

The Public Works Loan Commissioners, or, in the case of Ireland, the Commissioners of Public Works, acting with the consent of the Treasury, may, on the recommendation of the confirming authority, lend to any local authority any money required by them for purposes of this Act, on the security, in the case of the Metropolitan Board of Works, of consolidated stock created under the Metropolitan Board of Works (Loans) Act 1869, and in any other case on the security of the local rates. Such loan shall be repaid within such period, not exceeding fifty years, as may be recommended by the confirming authority, and shall bear interest at the rate of three and a half per cent. per annum, or such higher rate as may in the judgment of the Treasury be necessary to enable the loan to be made without loss to the Exchequer.

Any limit imposed on or in respect of local rates by any Act of Parliament other than this Act shall not apply to any rate required to be levied for the purpose of defraying any expenses under this Act.

Audit of  
accounts.

XXIII. The accounts of the Commissioners of Sewers and the accounts of the Metropolitan Board of Works under this Act shall respectively be audited in the same manner and with the same power in the officers auditing the same in which the accounts of those bodies, when acting in their capacities of Commissioners of Sewers and Metropolitan Board of Works, are for the time being required to be audited by law.

The accounts of an urban sanitary authority under this Act shall be audited in the same manner and with the same power in the officers auditing the same in which the accounts of that authority in its character of sanitary authority are for the time being required to be audited by law.

### PART III.

#### GENERAL PROVISIONS.

XXIV. Any petition or document proceeding from a local authority may be authenticated by their seal where such authority have a seal, and in any other case by the signature of any two or more members of the local authority, or in such other manner as the confirming authority may require.

Provision where local authority has no seal.

#### *Notices.*

XXV. Any notice required to be served upon the local authority may be lawfully served by delivering the same to the clerk of the local authority, or leaving the same at his office with some person employed there by him.

Service of notice on the local authority.

XXVI. The confirming authority may from time to time by order prescribe the forms of advertisements and notices under this Act; it shall not be obligatory on any persons to adopt such forms, but the same, when adopted, shall be deemed sufficient for all the purposes of this Act.

Power of confirming authority as to advertisements and notices.

XXVII. The confirming authority may, on the consideration of any petition of a local authority for an order confirming a scheme, dispense with the publication of any advertisement, or the service of any notice, proof of which publication or service is not given to them as required by this Act, where reasonable cause is shown to their satisfaction why such publication or service should be dispensed with, and such dispensation may be made by the confirming authority, either unconditionally or upon such condition as to the publication of other advertisements and the service of other notices or otherwise as the confirming authority may think fit, due care being taken by the confirming authority to prevent the interest of any person being prejudiced by the fact of the publication of any advertisement or the service of any notice being dispensed with in pursuance of this section.

Power of confirming authority to dispense with notices in certain cases.

XXVIII. Any notice served by the local authority for the purposes of this Act may be signed by the clerk of the local authority.

Authentication of notices served by the local authority

#### *Penalties.*

XXIX. Where any person obstructs the officer of health or any officer of the local or confirming authority acting in the performance of anything which the local or confirming authority are by this Act required or authorised to do, every person so offending shall, on summary con-

Penalty for obstructing officers in execution of Act.

viction, for every such offence forfeit a sum not exceeding twenty pounds.

*Saving Clauses.*

Relation  
of local  
Acts to  
general  
Acts.

XXX. Where in any place to which this Act applies, any local Act is in force providing for objects the same as or similar to the objects of this Act, the enactments of such local Act may be enforced at the discretion of the local authority either instead of or in concurrence with this Act; Provided that the local authority of any place to which this Act applies shall not, by reason of any local rate within its jurisdiction, be exempted from the performance of any duty or obligation to which such authority are subject under this Act.

*Definitions.*

Defini-  
tions of  
terms of  
Act.

XXXI. The expressions hereinafter mentioned shall respectively have the meanings hereby assigned to them, unless there is something in the context inconsistent with such meanings; that is to say,

“Secre-  
tary of  
State.”

“Secretary of State” means one of Her Majesty’s Principal Secretaries of State:

“Person.”

“Person” shall include a body of persons, corporate or unincorporate:

“Lands.”

“Lands” shall include messuages lands tenements and hereditaments of any tenure, and any right over land:

“The city  
of Lon-  
don.”

“The City of London” shall include the liberties thereof:

“The Me-  
tropolis.”

“The Metropolis” shall not include the city of London or the liberties thereof, but shall include all other parishes or places within the jurisdiction of the Metropolitan Board of Works:

“A dis-  
trict board  
or vestry.”

“A district board or vestry” within the Metropolis means a district board or vestry as incorporated by the Metropolis Management Act 1855:

“Medical  
officer of  
health.”

“Medical officer of health” shall, in the case of Ireland, mean consulting sanitary officer:

“Local  
Govern-  
ment  
Board.”

“Local Government Board” shall, in the case of Ireland, mean Local Government Board of Ireland:

“Clerk of  
local au-  
thority.”

“Clerk of local authority” shall, in the case of Ireland, mean executive sanitary officer and acting clerk:

“Superior  
courts.”

“Superior courts” shall mean, in the case of Ireland, Her Majesty’s superior courts in Ireland:

“The Treas-  
ury.”

“The Treasury” shall mean the Lords Commissioners of the Treasury, or any two of them:

“This  
Act.”

“This Act” includes any confirming Act as hereinbefore defined.



## SCHEDULE.

PROVISIONS WITH RESPECT TO THE PURCHASE AND TAKING OF LANDS IN  
ENGLAND OTHERWISE THAN BY AGREEMENT, AND OTHERWISE AMENDING  
THE LANDS CLAUSES ACT 1845.

### *Deposit of Maps and Plans.*

(1.) The local authority shall as soon as practicable after the passing of the confirming Act cause to be made out, and to be signed by their clerk or some other principal officer appointed by them, maps and schedules of all lands proposed to be taken compulsorily, (which lands are hereinafter referred to as the scheduled lands,) together with the names, so far as the same can be reasonably ascertained, of all persons interested in such lands as owners or reputed owners, lessees or reputed lessees or occupiers.

(2.) The maps made by the local authority shall be upon such scale and be framed in such manner as may be prescribed by the confirming authority.

(3.) The local authority shall deposit such maps and schedules at the office of the confirming authority, and shall deposit and keep copies of such maps and schedules at the office of the local authority.

### *Appointment of Arbitrator.*

(4.) After such deposit at the office of the confirming authority as aforesaid, it shall be lawful for the confirming authority, upon the application of the local authority, to appoint an arbitrator between the local authority and the persons interested in such of the scheduled lands, or lands injuriously affected by the execution of such scheme, so far as compensation for the same has not been made the subject of agreement.

### *Proceedings on Arbitration.*

(5.) Before any arbitrator enters upon any inquiry he shall, in the presence of a justice of the peace, make and subscribe the following declaration; that is to say,

'I A.B. do solemnly and sincerely declare, that I will faithfully and honestly, and to the best of my skill and ability, hear and determine the matters referred to me under the provisions of the Artizans' and Labourers' Dwellings Improvement Act 1875.

'A. B.

'Made and subscribed in the presence of

,'

And such declaration shall be annexed to the award when made ; and if any arbitrator, having made such declaration, wilfully act contrary thereto, he shall be guilty of a misdemeanour.

(6.) As soon as an arbitrator has been appointed as aforesaid, the confirming authority shall deliver to him the maps and schedules deposited at their office, and the local authority shall publish once in each of three successive weeks the following particulars :—

(a.) The appointment of the arbitrator :

(b.) The deposit at the office of the local authority of the copies of such maps and schedules as aforesaid, with a description of the situation of such office, and a statement of the time at which such copies may be inspected by any person desirous of inspecting the same :

(c.) A requisition directing the owners of or parties by this Act enabled to sell and convey or release any of the said scheduled lands, or any lands injuriously affected by the execution of the scheme of the local authority or any interest in such lands, to deliver to the arbitrator, on or before a day fixed by the arbitrator and named in such requisition, (and being a day not earlier than twenty-one days from the date of the insertion of the last of such notices,) a short statement in writing of the nature of their respective claims.

(7.) The arbitrator shall, after the expiration of the period within which such claims are required to be delivered to him as aforesaid, and so far as such claims may not be settled by agreement, proceed to inquire into and adjudicate according to the basis provided in this Act upon the compensation to be paid in respect of the scheduled lands, and of the several interests in such lands, and the compensation to be made for injury to any lands as are mentioned in his appointment injuriously affected by the execution of the scheme of the local authority.

(8.) The arbitrator shall, after due inquiry and examination, frame a provisional award, setting forth the compensation to be paid by the local authority in respect of the several interests in the said scheduled lands, and also, where any inquiry relates to injury to any lands injuriously affected by the execution of the scheme of the local authority, the compensation payable in respect of such injury.

(9.) The provisional award shall be deposited at the office of the confirming authority, and a copy shall be deposited at the office of the local authority.

(10.) The arbitrator shall cause notice of such award to be given to all persons entitled to compensation under the same, or who have made a claim before such arbitrator as claimants for compensation ; the arbitrator shall cause notice to be published once in each of three successive

weeks, stating that a copy of the provisional award has been deposited at the office of the local authority, and he shall in the notice of the award given to such persons as aforesaid, and also in the published notice, appoint a time and place, or times and places, for holding a meeting or meetings to hear objections against such provisional award (the first such meeting to be not earlier than twenty-one days after the last day of publication of the said notice.)

(11.) The arbitrator shall hold such meeting or meetings according to such notices, and thereat hear and determine any objections which may then and there be made to such provisional award by any person interested therein, or adjourn the further hearing thereof, if the arbitrator see fit, to a future meeting, and may take any measures which he may deem proper for ascertaining the compensation payable in respect of any such lands or interests as aforesaid, or the justice or propriety of any other matter of such provisional award, and may from time to time, if he see occasion, appoint and hold further meetings for hearing and determining objections to such provisional award, of which further meetings, when not holden by adjournment, notice shall be given in manner hereinbefore directed.

(12.) When the arbitrator has heard and determined all such objections, and made such inquiries as he may think necessary in relation thereto, and made such alterations (if any) as he may deem proper in the provisional award, he shall confirm such award under his hand and seal accordingly; and thereupon such award shall be final, and be binding and conclusive (subject to the provisions concerning an appeal hereinafter contained) upon all persons whomsoever, and no such award shall be set aside for irregularity in matter of form.

(13.) Such final award as aforesaid shall be deposited at the office of the confirming authority, and a copy thereof shall be deposited at the office of the local authority, and the local authority shall thereupon publish once in each of three successive weeks notice of the deposit having been made at the office of the local authority of a copy of the award so confirmed, and a further notice requiring all persons claiming to have any right to or interest in the lands (the compensation to be paid in respect of which is ascertained by such award) to deliver to the local authority, on or before a day to be named in such notice (such day not being earlier than twenty-one days from the date of the last publication of the notice), a short statement in writing of the nature of such claim, and a short abstract of the title on which the same is founded; and such statement and abstract shall be paid for by the local authority. Such abstract and title in the case of a person claiming a fee simple interest in the land, shall commence twenty years previous to the date of the claim, except there has been an absolute conveyance on sale within

twenty years, and more than ten years, previous to the claim when the abstract shall commence with such conveyance.

*Payment of Purchase Money.*

(14.) Within thirty days from the delivery of such statement and abstract as aforesaid to the local authority, the local authority shall, where it appears to them that any person so claiming is absolutely entitled to the lands, estate, or interest claimed by him, deliver to such person, on demand, a certificate stating the amount of the compensation to which he is entitled under the said award.

(15.) Every such certificate shall be prepared by and at the costs of the local authority; and where any agreement has been entered into as to the compensation payable in respect of the interest of any person in any lands, the local authority may, where it appears to them that such person is absolutely entitled, deliver to such person a like certificate.

(16.) The local authority shall, thirty days after demand, pay to the party to whom any such certificate is given, or otherwise as herein provided in the cases hereinafter mentioned, the amount of moneys specified to be payable by such certificate to the party to whom or in whose favour such certificate is given, his or her executors administrators or assigns.

(17.) If the local authority wilfully make default in such payment as aforesaid, then the party named in such certificate shall be entitled to enter up judgment against the local authority in any of Her Majesty's superior courts of law at Westminster, or in any court to which the jurisdiction of such courts may be transferred, for the amount of the sums specified in such certificate, in the same manner in all respects as if he had been, by warrant of attorney from the local authority, authorised to enter up judgment for the amount mentioned in the certificate, with costs, as is usual in like cases; and all moneys payable under such certificates or to be recovered by such judgments as aforesaid, shall at law and in equity be taken as personal estate as from the time of the local authority entering on any such lands as aforesaid.

(18.) When and so soon as the local authority have paid to the party to whom any such certificate as aforesaid is given, or otherwise, as herein provided, in the cases hereinafter mentioned, the amount specified to be payable by such certificate to the party to whom or in whose favour the certificate is given, his executors, administrators, or assigns, it shall be lawful for the local authority, upon obtaining such receipt as hereinafter mentioned, from time to time to enter upon any lands in respect of which such certificate is given, and thenceforth to hold the same for the



estate or interest in respect of which the amount specified in such certificate was payable.

(19.) In every case in which any moneys are paid by any local authority under this Act, for such compensation as aforesaid, the party receiving such moneys shall give to the local authority a receipt for the same, and such receipt shall have the effect of a grant release and conveyance of all the estate and interest of such party, and of all parties claiming under or through him, in the lands in respect of which such moneys are paid, provided such receipt has an ad valorem stamp of the same amount impressed thereon in respect of the purchase moneys mentioned in such certificate as would have been necessary if such receipt had been an actual conveyance of such estate or interest, every such receipt to be prepared by and at the costs of the local authority.

(20.) If it appear to the local authority, from any such statement and abstract as aforesaid, or otherwise, that the party making any such claim as aforesaid is not absolutely entitled to the lands, estate, or interest in respect of which his claim is made, or is under any disability, or if the title to such lands, estate, or interest be not satisfactorily deduced to the local authority, then and in every such case the amount to be paid by the local authority in respect of such lands, estate, or interest as aforesaid shall be paid and applied as provided by the clauses of "The Lands Clauses Consolidation Act 1845," as amended by "The Court of Chancery Funds Act 1872," "with respect to the purchase money or "compensation coming to parties having limited interests, or prevented "from treating, or not making title."

(21.) Where any person claiming any right or interest in any lands refuses to produce his title to the same, or where the local authority have under the provisions of this Act taken possession of any lands in respect of the compensation whereof, or of any estate or interest wherein no claim has been made within one year from the time of the local authority taking possession, or if any party to whom any such certificate has been given or tendered refuses to receive such certificate, or to accept the amount therein specified as payable to him, then and in any such case the amount payable by the local authority in respect of such lands, estate, or interest, or the amount specified in such certificate, shall be paid into the Bank of England, in manner provided by the last-mentioned clauses of "The Lands Clauses Consolidation Act 1845," as amended by "The Court of Chancery Funds Act 1872," and the amount so paid into the said Bank shall be accordingly dealt with as by the said Act provided.

(22.) Nothing herein contained shall prevent the local authority from requiring any further abstract or evidence of title respecting any lands included in any such award as aforesaid, in addition to the abstract or

statement hereinbefore mentioned, if they think fit, so as the same be obtained at the costs of the local authority.

(23.) If from any reason whatever the local authority does not deliver the certificate aforesaid to any party claiming to be entitled to any interest in any lands the possession whereof has been taken by the local authority as aforesaid, then the right to have a certificate according to the provisions of this Act may, at the costs and charges of the local authority, be enforced by any party or parties, by application to the High Court of Chancery, or any court to which the jurisdiction of the High Court of Chancery may be transferred, in a summary way by petition, and all other rights and interests of any party or parties arising under the provisions of this Act may be in like manner enforced against the local authority by such application as aforesaid.

*Entry on Lands on making Deposit.*

(24.) Where the local authority are desirous, for the purposes of their works, of entering upon any lands before they would be entitled to enter thereon under the provisions hereinbefore contained, it shall be lawful for the local authority, at any time, after the arbitrator has framed his provisional award, upon depositing in the Bank of England such sum as the arbitrator may certify to be in his opinion the proper amount to be so deposited in respect of any lands authorised to be purchased or taken by the local authority, and mentioned in such provisional award, to enter upon and use such lands for the purposes of the improvement scheme of the local authority; and the arbitrator shall, upon the request of the local authority, at any time after he has framed such provisional award, certify under his hand the sum which, in his opinion, should be so deposited by the local authority in respect of any lands mentioned in such provisional award before they enter upon and use the same as aforesaid, and the sum to be so certified shall be the sum or the amount of the several sums set forth in such provisional award as the sum or sums to be paid by the local authority in respect of such lands, or such greater amount as to the arbitrator, under the circumstances of the case, may seem proper; and, notwithstanding such entry as aforesaid, all proceedings for and in relation to the completion of the award the delivery of certificates, and other proceedings under this Act, shall be had, and payments made, as if such entry and deposit had not been made; provided that the local authority shall, where they enter upon any lands by virtue of this present provision, pay interest at the rate of five pounds per centum per annum upon the compensation money payable by them in respect of any lands so entered upon, from the time of their entry until the time of the payment of such money and interest to the party entitled thereto, or where, under the provisions of this Act, such compensation is

required to be paid into the said Bank, then until the same, with such interest, is paid into such Bank accordingly; and where under this provision interest is payable on any compensation money the certificate to be delivered by the local authority in respect thereof shall specify that interest is so payable, and the same shall be recoverable in like manner as the principal money mentioned in such certificate.

(25.) The money so deposited as last aforesaid shall be paid into the Bank of England to such account as may from time to time be directed by any regulation or Act for the time being in force in relation to moneys deposited in the Bank in similar cases, or to such account as may be directed by any order of the Court of Chancery, or of any court to whom the powers of the Court of Chancery may be transferred, and remain in the Bank by way of security to the parties interested in the lands which have been so entered upon, for the payment of the money to become payable by the local authority in respect thereof under the award of the arbitrator; and the money so deposited may, on the application by petition of the local authority, be ordered to be invested in Bank Annuities or Government securities, and accumulated; and upon such payment as aforesaid by the local authority it shall be lawful for the Court of Chancery, or any other court to which the jurisdiction of the Court of Chancery may be transferred, upon a like application, to order the money so deposited, or the funds in which the same shall have been invested, together with the accumulation thereof, to be repaid or transferred to the local authority, or, in default of such payment as aforesaid by the local authority, it shall be lawful for the said court to order the same to be applied in such manner as it thinks fit for the benefit of the parties for whose security the same shall so have been deposited.

#### *Appeal.*

(26.) Where the party named in any certificate issued under the provisions herein-before contained of the amount of the compensation ascertained by any award under this Act (or any party claiming under the party so named) is dissatisfied with the amount in such certificate certified to be payable and such amount exceeds five hundred pounds, and

Where any party claiming any interest in any moneys so paid into court as aforesaid is dissatisfied with the amount of the price or compensation in respect of which such moneys are paid into court, and such amount exceeds five hundred pounds, also

Where the local authority is dissatisfied with the amount of compensation which the arbitrator appointed under the provisions of this Act has awarded to be paid by the local authority to any person in respect of any



estate or interest in lands, and such amount exceed the sum of five hundred pounds ;

The party dissatisfied may submit the question of the proper amount of compensation to a jury, provided that such party give notice in writing to the other party of their intention to appeal within ten days after the cause of appeal has arisen.

The cause of appeal shall be deemed to have arisen,—

- (1.) Where a certificate has been issued as aforesaid, at the date of the issue of the certificate :
- (2.) Where moneys have been paid into court, at the date of the payment into court :
- (3.) Where the local authority appeals, at the date of the making of the final award.

(27.) Where a notice has been given under this Act of an appeal to a jury in respect of compensation for land, or any interest in land, a question of disputed compensation required to be determined by the verdict of a jury shall be deemed to have arisen within the meaning of the Lands Clauses Consolidation Act 1845 and all the provisions of that Act contained in sections thirty-eight to fifty-seven, both inclusive, shall be deemed to apply, except sections forty-seven and fifty-one : Provided also that,—

- (1.) Where the local authority appeals, that authority shall be deemed to be the plaintiff, and the party entitled to compensation to be the defendant ; and
- (2.) Where the party claiming compensation appeals, then, in case the verdict of the jury is for a sum exceeding the award of the arbitrator, the local authority shall pay to such party the costs of the trial, such costs to be taxed and ascertained in the same manner as costs are by law ascertained on the trial of issues tried in the Court of Queen's Bench, or any court to which the jurisdiction of the Court of Queen's Bench may be transferred ; but in case the verdict of the jury is for a sum not exceeding the award of the arbitrator, the party appealing shall pay to the local authority the costs of the trial to be taxed and ascertained in manner aforesaid.

(3.) Where the local authority is the appellant,—

- (1.) Notwithstanding the verdict of the jury may be for a sum less than that awarded by the arbitrator, the local authority shall pay to the other party such sum not exceeding twenty pounds for the costs of the trial as the sheriff or other officer before whom the same is tried shall direct ; and,
- (2.) In case the verdict of the jury is for a sum equal to or exceeding the award of the arbitrator, the local authority



shall pay to the other party the costs of the trial, such costs to be taxed and ascertained in manner aforesaid.

- (4.) The amount of compensation awarded by the arbitrator shall not be communicated to the jury, but they shall be required to make an independent assessment of the amount of compensation to which the party claiming compensation is entitled.

*Costs of Arbitration.*

(28.) The salary or remuneration, travelling and other expenses of the arbitrator, and all costs, charges, and expenses (if any) which may be incurred by the confirming authority in carrying the provisions of this Act into execution, shall be paid by the local authority ; and the amount of such costs charges and expenses shall from to time be certified by the confirming authority after first hearing any objections that may be made to the reasonableness of any such costs charges and expenses by or on behalf of the local authority ; and every certificate of the said confirming authority certifying the amount of such costs charges and expenses shall be taken as proof in all proceedings at law or in equity of the amount of such respective costs charges and expenses, and the amount so certified shall be a debt due from the local authority to the Crown, and shall be recoverable accordingly. Further, any such certificate may be made a rule of one of the superior courts of law on the application of any party named therein, and may be enforced accordingly.

(29.) It shall be lawful for the arbitrator, where he thinks fit, upon the request of any party by whom any claim has been made before him, to certify the amount of the costs properly incurred by such party in relation to the arbitration, and the amount of the costs so certified shall be paid by the local authority ; and if within seven days after demand the amount so certified be not paid to the party entitled to receive the same, such amount shall be recoverable as a debt from such local authority, with interest at the rate of five per cent. for any time during which the same remains unpaid after such seven days as aforesaid, but no such certificate shall be given where the arbitrator has awarded the same or a less sum than has been offered by the local authority in respect of such claim before the appointment of the arbitrator.

*Miscellaneous.*

(30.) The arbitrator may call for the production of any documents in the possession or power of the local authority, or of any party making any claim under the provisions of this Act, which such arbitrator may think necessary for determining any question or matter to be determined by him under this Act, and may examine any such party and his wit-

nesses, and the witnesses for the local authority, on oath, and administer the oaths necessary for that purpose.

(31.) If any arbitrator appointed in pursuance of this Act die, or refuse decline or become incapable to act, the confirming authority may appoint an arbitrator in his place, who shall have the same powers and authorities as the arbitrator first appointed; and upon the appointment of any arbitrator in the place of an arbitrator dying, or refusing, declining, or becoming incapable to act, all the documents relating to the matter of the arbitration which were in the possession of such arbitrator shall be delivered to the arbitrator appointed in his place, and the local authority shall publish notice of such appointment in the *London Gazette*.

(32.) All notices required by this schedule to be published shall be published in some one and the same newspaper circulating within the jurisdiction of the local authority, and where no other form of service is prescribed all notices required to be served or given by the local authority under this schedule or otherwise upon any persons interested in or entitled to sell lands, shall be served in manner in which notices of lands proposed to be taken compulsorily for the purpose of an improvement scheme are directed by this Act to be served upon owners or reputed owners, lessees or reputed lessees, and occupiers.

38 & 39 Vict., c. 63.

An Act to repeal the Adulteration of Food Acts, and to make better provision for the sale of Food and Drugs in a pure state.

[11th August 1875.]

The Adulteration Act of 1860 applied only to articles of food and drink, but was extended to medicines by the Pharmacy Act 1868 (as respects Ireland, by 33 & 34 Vict., c. 26), and was amended by 35 & 36 Vict., c. 74 (An Act to amend the law for the Prevention of Adulteration of Food and Drink and of Drugs).

All these enactments are repealed by section 1 of the Act of 1875, which differs from them considerably as respects the description of the offence of adulteration (see sections 3, 4); and imposes a new penalty on any person "selling to the prejudice of the purchaser any article of food or any drug which is not of the nature, substance, and quality of the article demanded by such purchaser," subject to the exceptions enumerated in section 6.

The provisions for analysis of articles of food and drink and of drugs, and for obtaining samples for analysis and with respect to proceedings against offenders, are considerably amplified; and special provisions are introduced (sect. 30) as to the examination of tea on importation by the Commissioners of Customs.

**W**HEREAS it is desirable that the Acts now in force relating to the adulteration of food should be repealed, and that the law regarding the sale of food and drugs in a pure and genuine condition should be amended:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

I. From the commencement of this Act the statutes of the twenty-third and twenty-fourth of Victoria, chapter eighty-four, of the thirty-first and thirty-second of Victoria, chapter one hundred and twenty-one, section twenty-four, of the thirty-third and thirty-fourth of Victoria, chapter twenty-six, section three, and of the thirty-fifth and thirty-sixth of Victoria, chapter seventy-four, shall be repealed, except in regard to any appointment made under them and not then determined, and in regard to any offence committed against them or any prosecution or other act commenced and not concluded or completed, and any payment of money then due in respect of any provision thereof.

Repeal of statutes.

Interpre-  
tation of  
words.

II. The term "food" shall include every article used for food or drink by man, other than drugs or water :

The term "drug" shall include medicine for internal or external use :

The term "county" shall include every county riding and division, as well as every county of a city or town not being a borough :

The term "justices" shall include any police and stipendiary magistrate invested with the powers of a justice of the peace in England, and any divisional justices in Ireland.

*Description of Offences.*

Prohibi-  
tion of the  
mixing of  
injurious  
ingredi-  
ents, and  
of selling  
the same.

III. No person shall mix colour stain or powder, or order or permit any other person to mix colour stain or powder, any article of food with any ingredient or material so as to render the article injurious to health, with intent that the same may be sold in that state, and no person shall sell any such article so mixed coloured stained or powdered, under a penalty in each case not exceeding fifty pounds for the first offence ; every offence, after a conviction for a first offence, shall be a misdemeanour, for which the person, on conviction, shall be imprisoned for a period not exceeding six months with hard labour.

Prohibi-  
tion of the  
mixing of  
drugs with  
injurious  
ingredi-  
ents, and  
of selling  
the same.

IV. No person shall, except for the purpose of compounding as herein-after described, mix colour stain or powder, or order or permit any other person to mix colour stain or powder, any drug with any ingredient or material so as to affect injuriously the quality or potency of such drug, with intent that the same may be sold in that state, and no person shall sell any such drug so mixed coloured stained or powdered, under the same penalty in each case respectively as in the preceding section for a first and subsequent offence.

Exemp-  
tion in  
case of  
proof of  
absence of  
know-  
ledge.

V. Provided that no person shall be liable to be convicted under either of the two last foregoing sections of this Act in respect of the sale of any article of food, or of any drug, if he shows to the satisfaction of the justice or court before whom he is charged that he did not know of the article of food or drug sold by him being so mixed coloured stained or powdered as in either of those sections mentioned, and that he could not with reasonable diligence have obtained that knowledge.

Prohibi-  
tion of the  
sale of  
articles of  
food and  
of drugs  
not of the  
proper  
nature  
substance  
and  
quality.

VI. No person shall sell to the prejudice of the purchaser any article of food or any drug which is not of the nature substance and quality of the article demanded by such purchaser, under a penalty not exceeding twenty pounds ; provided that an offence shall not be deemed to be committed under this section in the following cases ; that is to say,

- (1.) Where any matter or ingredient not injurious to health has been added to the food or drug because the same is required for the production or preparation thereof as an article of commerce, in a state fit for carriage or consumption, and not fraudulently to



increase the bulk weight or measure of the food or drug, or conceal the inferior quality thereof;

- (2.) Where the drug or food is a proprietary medicine, or is the subject of a patent in force, and is supplied in the state required by the specification of the patent;
- (3.) Where the food or drug is compounded as in this Act mentioned;
- (4.) Where the food or drug is unavoidably mixed with some extraneous matter in the process of collection or preparation.

Provision for the sale of compounded articles of food and compounded drugs.

VII. No person shall sell any compound article of food or compounded drug which is not composed of ingredients in accordance with the demand of the purchaser, under a penalty not exceeding twenty pounds.

VIII. Provided that no person shall be guilty of any such offence as aforesaid in respect of the sale of an article of food or a drug mixed with any matter or ingredient not injurious to health, and not intended fraudulently to increase its bulk weight or measure, or conceal its inferior quality, if at the time of delivering such article or drug he shall supply to the person receiving the same a notice, by a label distinctly and legibly written or printed on or with the article or drug, to the effect that the same is mixed.

Protection from offences by giving of label.

IX. No person shall, with the intent that the same may be sold in its altered state without notice, abstract from an article of food any part of it so as to affect injuriously its quality substance or nature, and no person shall sell any article so altered without making disclosure of the alteration, under a penalty in each case not exceeding twenty pounds.

Prohibition of the abstraction of any part of an article of food before sale, and selling without notice.

*Appointment and Duties of Analysts, and Proceedings to obtain Analysis.*

X. In the city of London and the liberties thereof the Commissioners of Sewers of the city of London and the liberties thereof, and in all other parts of the metropolis the vestries and district boards acting in execution of the Act for the better local management of the metropolis, the court of quarter sessions of every county, and the town council of every borough having a separate court of quarter sessions, or having under any general or local Act of Parliament or otherwise a separate police establishment, may, as soon as convenient after the passing of this Act, where no appointment has been hitherto made, and in all cases as and when vacancies in the office occur, or when required so to do by the Local Government Board, shall, for their respective city districts counties or boroughs, appoint one or more persons possessing competent knowledge skill and experience, as analysts of all articles of food and drugs sold within the said city metropolitan districts counties or boroughs, and shall pay to such analysts such remuneration as shall be mutually agreed upon

Appointment of analysts.

and may remove him or them as they shall deem proper; but such appointments and removals shall at all times be subject to the approval of the Local Government Board, who may require satisfactory proof of competency to be supplied to them, and may give their approval absolutely or with modifications as to the period of the appointment and removal, or otherwise: Provided, that no person shall hereafter be appointed an analyst for any place under this section who shall be engaged directly or indirectly in any trade or business connected with the sale of food or drugs in such place.

[The remainder of the section relates exclusively to Scotland and Ireland.]

Town council of a borough may engage the analyst of another borough or of the county.

XI. The town council of any borough may agree that the analyst appointed by any neighbouring borough or for the county in which the borough is situated, shall act for their borough during such time as the said council shall think proper, and shall make due provision for the payment of his remuneration, and if such analyst shall consent, he shall during such time be the analyst for such borough for the purposes of this Act.

Power to purchaser of an article of food to have it analysed.

XII. Any purchaser of an article of food or of a drug in any place being a district county city or borough where there is any analyst appointed under this or any Act hereby repealed shall be entitled, on payment to such analyst of a sum not exceeding ten shillings and sixpence, or if there be no such analyst then acting for such place, to the analyst of another place, of such sum as may be agreed upon between such person and the analyst, to have such article analysed by such analyst, and to receive from him a certificate of the result of his analysis.

Officer named to obtain a sample of food or drug to submit to analyst.

XIII. Any medical officer of health, inspector of nuisances, or inspector of weights and measures, or any inspector of a market, or any police constable under the direction and at the cost of the local authority appointing such officer inspector or constable, or charged with the execution of this Act, may procure any sample of food or drugs, and if he suspect the same to have been sold to him contrary to any provision of this Act, shall submit the same to be analysed by the analyst of the district or place for which he acts, or if there be no such analyst then acting for such place, to the analyst of another place, and such analyst shall, upon receiving payment as is provided in the last section, with all convenient speed analyse the same and give a certificate to such officer, wherein he shall specify the result of the analysis.

Provision for dealing with the sample when purchased.

XIV. The person purchasing any article with the intention of submitting the same to analysis shall, after the purchase shall have been completed, forthwith notify to the seller or his agent selling the article his intention to have the same analysed by the public analyst, and shall

offer to divide the article into three parts to be then and there separated, and each part to be marked and sealed or fastened up in such manner as its nature will permit, and shall, if required to do so, proceed accordingly, and shall deliver one of the parts to the seller or his agent.

He shall afterwards retain one of the said parts for future comparison, and submit the third part, if he deems it right to have the article analysed, to the analyst.

XV. If the seller or his agent do not accept the offer of the purchaser to divide the article purchased in his presence, the analyst receiving the article for analysis shall divide the same into two parts, and shall seal or fasten up one of those parts and shall cause it to be delivered, either upon receipt of the sample or when he supplies his certificate to the purchaser, who shall retain the same for production in case proceedings shall afterwards be taken in the matter.

Provision when sample is not divided.

XVI. If the analyst do not reside within two miles of the residence of the person requiring the article to be analysed, such article may be forwarded to the analyst through the post office as a registered letter, subject to any regulations which the Postmaster General may make in reference to the carrying and delivery of such article, and the charge for the postage of such article shall be deemed one of the charges of this Act or of the prosecution, as the case may be.

Provision for sending article to the analyst through the post office.

XVII. If any such officer inspector or constable, as above described, shall apply to purchase any article of food or any drug exposed to sale or on sale by retail on any premises or in any shop or stores, and shall tender the price for the quantity which he shall require for the purpose of analysis, not being more than shall be reasonably requisite, and the person exposing the same for sale shall refuse to sell the same to such officer inspector or constable, such person shall be liable to a penalty not exceeding ten pounds.

Person refusing to sell any article to any officer liable to penalty.

XVIII. The certificate of the analysis shall be in the form set forth in the schedule hereto, or to the like effect.

Form of the certificate.

XIX. Every analyst appointed under any Act hereby repealed or this Act shall report quarterly to the authority appointing him the number of articles analysed by him under this Act during the foregoing quarter, and shall specify the result of each analysis and the sum paid to him in respect thereof, and such report shall be presented at the next meeting of the authority appointing such analyst, and every such authority shall annually transmit to the Local Government Board, at such time and in such form as the Board shall direct, a certified copy of such quarterly report.

Quarterly report of the analyst.



*Proceedings against Offenders.*

Proceed-  
ings  
against  
offenders.

XX. When the analyst having analysed any article shall have given his certificate of the result, from which it may appear that an offence against some one of the provisions of this Act has been committed, the person causing the analysis to be made may take proceedings for the recovery of the penalty herein imposed for such offence, before any justices in petty sessions assembled having jurisdiction in the place where the article or drug sold was actually delivered to the purchaser, in a summary manner.

Every penalty imposed by this Act shall be recovered in England in the manner prescribed by the eleventh and twelfth of Victoria, chapter forty-three.

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Certificate  
of analyst  
prima  
facie evi-  
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the prose-  
cution,  
but ana-  
lyst to be  
called if  
required.  
Defendant  
and his  
wife may  
be ex-  
amined.

Every penalty herein imposed may be reduced or mitigated according to the judgment of the justices.

Power to  
justices to  
have ar-  
ticles of  
food and  
drug ana-  
lysed.

XXI. At the hearing of the information in such proceeding the production of the certificate of the analyst shall be sufficient evidence of the facts therein stated, unless the defendant shall require that the analyst shall be called as a witness, and the parts of the articles retained by the person who purchased the article shall be produced, and the defendant may, if he think fit, tender himself and his wife to be examined on his behalf, and he or she shall, if he so desire, be examined accordingly.

XXII. The justices before whom any complaint may be made, or the court before whom any appeal may be heard, under this Act may, upon the request of either party, in their discretion cause any article of food or drug to be sent to the Commissioners of Inland Revenue, who shall thereupon direct the chemical officers of their department at Somerset House to make the analysis; and give a certificate to such justices of the result of the analysis; and the expense of such analysis shall be paid by the complainant or the defendant as the justices may by order direct.

Appeal to  
quarter  
sessions.

XXIII. Any person who has been convicted of any offence punishable by any Act hereby repealed or by this Act by any justices may appeal in England to the next general or quarter sessions of the peace which shall be held for the city country town or place wherein such conviction shall have been made, provided that such person enter into a recognizance within three days next after such conviction, with two sufficient sureties, conditioned to try such appeal, and to be forthcoming to abide the judgment and determination of the court at such general or quarter sessions, and to pay such costs as shall be by such court awarded; and the justices before whom such conviction shall be had are hereby empowered and required to take such recognizance; and the court at



such general or quarter sessions are hereby required to hear and determine the matter of such appeal, and may award such costs to the party appealing or appealed against as they or he shall think proper.

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XXIV. In any prosecution under this Act, where the fact of an article having been sold in a mixed state has been proved, if the defendant shall desire to rely upon any exception or provision contained in this Act, it shall be incumbent upon him to prove the same.

XXV. If the defendant in any prosecution under this Act prove to the satisfaction of the justices or court that he had purchased the article in question as the same in nature, substance, and quality as that demanded of him by the prosecutor, and with a written warranty to that effect, that he had no reason to believe at the time when he sold it that the article was otherwise, and that he sold it in the same state as when he purchased it, he shall be discharged from the prosecution, but shall be liable to pay the costs incurred by the prosecutor, unless he shall have given due notice to him that he will rely on the above defence.

XXVI. Every penalty imposed and recovered under this Act shall be paid in the case of a prosecution by any officer, inspector, or constable of the authority who shall have appointed an analyst or agreed to the acting of an analyst within their district, to such officer, inspector, or constable, and shall be by him paid to the authority for whom he acts, and be applied towards the expenses of executing this Act, any Statute to the contrary notwithstanding; but in the case of any other prosecution the same shall be paid and applied in England according to the law regulating the application of penalties for offences punishable in a summary manner, and in Ireland in the manner directed by the Fines Act, Ireland, 1851, and the Acts amending the same.

XXVII. Any person who shall forge, or shall utter, knowing it to be forged for the purposes of this Act, any certificate or any writing purporting to contain a warranty, shall be guilty of a misdemeanor and be punishable on conviction by imprisonment for a term not exceeding two years with hard labour;

Every person who shall wilfully apply to an article of food or a drug, in any proceedings under this Act, a certificate or warranty given in relation to any other article or drug, shall be guilty of an offence under this Act, and be liable to a penalty not exceeding twenty pounds;

Every person who shall give a false warranty in writing to any purchaser in respect of an article of food or a drug sold by him as principal or agent, shall be guilty of an offence under this Act, and be liable to a penalty not exceeding twenty pounds;

In any prosecution defendant to prove that he is protected by exception or provision.

Defendant to be discharged if he prove that he bought the article in the same state as sold, and with a warranty. No costs except on issues proved against him.

Application of penalties.

Punishment for forging certificate or warranty;

for wilful misapplication of warranty;

for false warranty;

for false  
label.

And every person who shall wilfully give a label with any article sold by him which shall falsely describe the article sold, shall be guilty of an offence under this Act, and be liable to a penalty not exceeding twenty pounds.

Proceed-  
ings by in-  
dictment  
and con-  
tracts not  
to be  
affected.

XXVIII. Nothing in this Act contained shall affect the power of proceeding by indictment, or take away any other remedy against any offender under this Act, or in any way interfere with contracts and bargains between individuals, and the rights and remedies belonging thereto.

Provided that in any action brought by any person for a breach of contract on the sale of any article of food or of any drug, such person may recover alone or in addition to any other damages recoverable by him the amount of any penalty in which he may have been convicted under this Act, together with the costs paid by him upon such conviction and those incurred by him in and about his defence thereto, if he prove that the article or drug the subject of such conviction was sold to him as and for an article or drug of the same nature substance and quality as that which was demanded of him, and that he purchased it not knowing it to be otherwise, and afterwards sold it in the same state in which he purchased it; the defendant in such action being nevertheless at liberty to prove that the conviction was wrongful, or that the amount of costs awarded or claimed was unreasonable.

*Expenses of executing the Act.*

Expenses  
of execut-  
ing Act.

XXIX. The expenses of executing this Act shall be borne, in the city of London and the liberties thereof, by the consolidated rates raised by the Commissioners of Sewers of the city of London and the liberties thereof, and in the rest of the metropolis by any rates or funds applicable to the purposes of the Act for the better local management of the metropolis, and otherwise as regards England, in counties by the county rate, and in boroughs by the borough fund or rate.

\* \* \* \* \*

*Special Provisions as to Tea.*

Tea to be  
examined  
by the  
Customs  
on impor-  
tation.

XXX. From and after the first day of January one thousand eight hundred and seventy-six all tea imported as merchandise into and landed at any port in Great Britain or Ireland shall be subject to examination by persons to be appointed by the Commissioners of Customs, subject to the approval of the Treasury, for the inspection and analysis thereof, for which purpose samples may, when deemed necessary by such inspectors, be taken and with all convenient speed be examined by the

analysts to be so appointed; and if upon such analysis the same shall be found to be mixed with other substances or exhausted tea, the same shall not be delivered unless with the sanction of the said commissioners, and on such terms and conditions as they shall see fit to direct, either for home consumption or for use as ships stores or for exportation; but if on such inspection and analysis it shall appear that such tea is in the opinion of the analyst unfit for human food, the same shall be forfeited and destroyed or otherwise disposed of in such manner as the said commissioners may direct.

XXXI. Tea to which the term "exhausted" is applied in this Act shall mean and include any tea which has been deprived of its proper quality strength or virtue by steeping infusion decoction or other means.

Inter-  
pre-  
tation of  
Act.

XXXII. For the purposes of this Act every liberty of a cinque port not comprised within the jurisdiction of a borough shall be part of the county in which it is situated, and subject to the jurisdiction of the justices of such county.

Provision  
for the  
liberty of  
a cinque  
port.

\* \* \* \* \*

XXXV. This Act shall commence on the first day of October one thousand eight hundred and seventy-five.

Com-  
mence-  
ment of  
the Act.

XXXVI. This Act may be cited as "The Sale of Food and Drugs Act 1875."

Title of  
the Act.

## SCHEDULE.

## FORM OF CERTIFICATE.

To <sup>a</sup>

I, the undersigned, public analyst for the  
do hereby certify that I received on the                      day of  
18                      , from <sup>b</sup>                      , a sample of  
for analysis (which then weighed <sup>c</sup>                      ), and have analysed the same,  
and declare the result of my analysis to be as follows :

I am of opinion that the same is a sample of genuine

or,

I am of opinion that the said sample contained the parts as under, or  
the per-centages of foreign ingredients as under.

---

*Observations.* <sup>d</sup>

---

As witness my hand this

day of  
A.B.,  
at

---

<sup>a</sup> Here insert the name of the person submitting the article for analysis.

<sup>b</sup> Here insert the name of the person delivering the sample.

<sup>c</sup> When the article cannot be conveniently weighed, this passage may be erased or the blank may be left unfilled.

<sup>d</sup> Here the analyst may insert at his discretion his opinion as to whether the mixture (if any) was for the purpose of rendering the article portable or palatable, or of preserving it, or of improving the appearance, or was unavoidable, and may state whether in excess of what is ordinary, or otherwise, and whether the ingredients or materials mixed are or not injurious to health.

In the case of a certificate regarding milk, butter, or any article liable to decomposition, the analyst shall specially report whether any change had taken place in the constitution of the article that would interfere with the analysis.



38 &amp; 39 Vict. c. 83.

An Act to amend the Law relating to Securities for Loans contracted by Local Authorities. [13th August 1875.]

Local authorities are enabled by this Act to raise a loan on the security of their local rates by the issue (1) of debentures, or (2) of debenture stock, or (3) of annuity certificates, or partly in one way and partly in another. The Act is not compulsory, but its adoption will to a great extent render unnecessary the insertion of the clauses with reference to borrowing hitherto inserted in private Bills. Loans raised under its provisions must be repaid, within the period prescribed by the special Act, or, if no period is prescribed, within twenty years.

WHEREAS it is expedient to amend the law relating to securities for loans contracted by local authorities :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

(1.) *Preliminary.*

I. This Act may be cited for all purposes as "The Local Loans Act, 1875." Short title.

II. This Act shall not extend to Scotland or Ireland.

Limits of Act.

III. This Act shall come into operation on the first day of January one thousand eight hundred and seventy-six, which day is hereinafter referred to as the commencement of this Act.

Commencement of Act.

IV. A local authority shall be deemed to borrow, subject to the provisions of this Act, whenever it raises a loan by the issue of debentures or debenture stock or annuity certificates, purporting to be created under its powers, or partly in one way and partly in another ; subject to this proviso, that where a loan is directed to be raised by debentures or debenture stock or annuity certificates under this Act, the prescribed mode only shall be adopted.

Definition of borrowing under Act.

(2.) *Debentures.*

V. A debenture under this Act shall be an instrument taking effect as a deed, and charging the local rate or property in such debenture specified with payment, as in the debenture mentioned, of the principal sum and interest therein specified.

Regulations as to debentures.

Where a debenture under this Act charges property other than the local rate, and it is intended that in default of payment of the principal sum due on such debenture, or of the interest thereon, the property is to be sold, a statement to that effect shall be inserted in the debenture.

The principal sum may be made payable to the bearer of the debenture or to a person to be named therein, his executors administrators or assigns.

A debenture in which the principal sum is made payable to the bearer shall be transferable by delivery.

A debenture in which the principal sum is made payable to a person named therein, his executors administrators or assigns, is in this Act referred to as a nominal debenture, and shall be transferable by writing in manner directed by the local authority.

There may be attached to a debenture under this Act, or be thereafter issued in respect thereof, or partly in one way and partly in the other, coupons making the interest as therein mentioned payable to the bearer of each coupon, or to the person named in each coupon or his order, or the interest on a debenture may be made payable to the owner for the time being of such debenture, or may be otherwise made payable in such manner as in the said debenture mentioned.

A coupon making the interest therein mentioned payable to the person named therein, or his order is in this Act referred to as a coupon payable to order.

A debenture under this Act shall not be issued for a less sum than the prescribed sum, or where no sum is prescribed, than twenty pounds.

### (3.) *Debenture Stock.*

Regula-  
tions as to  
debenture  
stock.

VI. A debenture stock may be created and issued by a local authority having power to raise a loan or any part thereof by the issue of debenture stock. Such debenture stock shall be of a nominal amount, not exceeding the amount of money authorised to be raised by such stock, and shall, unless otherwise provided by the conditions of issue, be redeemable at par at the option of the local authority at such times and upon such conditions as the local authority may declare at the time of the issue thereof.

The title of any person to any share in debenture stock shall be evidenced by the entry in the register as in this Act mentioned of the name of such person as owner of such share.

Debenture stock shall bear such rate of interest, to be payable at such times as the local authority may declare at the time of issue of the stock.

Debenture stock and the interest thereon shall be a charge on the local rate or property specified at the time of the issue thereof, in the

same manner as if it were a principal sum and interest charged thereon by deed.

Where debenture stock and the interest thereon is a charge on property other than the local rate, and it is intended that in default of the payment of the interest thereon, or for the purpose of raising the money required for the redemption of the stock, the property is to be sold, a declaration to that effect shall be made by the local authority at the time of the issue of the stock, and shall be deemed to form one of the conditions of such issue.

Debenture stock shall have all the incidents of personal estate, and shall, subject to the provisions of this Act, be transferable by writing in manner directed by the local authority.

The interest on any share of debenture stock shall be recoverable by the owner of such share in the same manner in all respects as if such interest were an annuity of like amount secured to him by an annuity certificate under this Act.

The owner of any share in debenture stock shall not be entitled to require payment of the nominal amount of stock held by him, except at the time and upon the conditions declared by the local authority at the time of the issue of such stock.

The conditions of issue of debenture stock shall be declared by the local authority at the time of such issue, and a printed copy of such conditions shall be supplied to every owner of debenture stock requiring the same, and shall be entered in the register of such stock.

The local authority may, if it thinks fit, on the application of the owner of any share in debenture stock, grant to him a certificate of title to his share in such stock, or any part of such share, with coupons attached entitling the bearer of the coupons to the interest on the share or part of a share specified in such certificate.

A certificate of title to a share in debenture stock under this section (in this Act called a stock certificate to bearer) shall entitle the bearer to the stock therein described, and to the interest thereon, and shall be transferable by delivery.

Any share in stock in respect of which a stock certificate to bearer has been issued, shall, so long as such certificate is outstanding, cease to be dealt with through the medium of the register.

Debenture stock, in respect of which a stock certificate to bearer has not been issued, is in this Act referred to as nominal debenture stock.

#### (4.) *Annuity Certificates.*

VII. An annuity certificate under this Act shall be an instrument taking effect as a deed, and charging the local rate or property in such certificate specified with payment, as in the certificate mentioned, of the annual sum therein specified.

Regulations, as to annuity certificates.

Where an annuity certificate under this Act charges property other than the local rate, and it is intended that in default of payment of the annual sum secured by such annuity certificate, or of some part thereof, the property is to be sold, a statement to that effect shall be inserted in the annuity certificate.

The annual sum may be made payable to the bearer of the certificate or to a person to be named therein, his executors administrators or assigns.

An annuity certificate in which the annual sum is made payable to the bearer shall be transferable by delivery.

An annuity certificate in which the annual sum is made payable to a person named therein, his executors administrators or assigns, is in this Act referred to as a nominal annuity certificate, and shall be transferable by writing in manner directed by the local authority.

An annuity certificate under this Act shall not be issued for a less annual sum than the prescribed sum, or, where no sum is prescribed, than three pounds.

(5.) *Priority of Loans.*

Priority of  
loans.

VIII. All sums for the time being due or authorised to be raised on or in respect of any securities issued in respect of the same loan by a local authority under this Act shall be paid without any preference the one over the other by reason of the priority of date of any of such securities.

Where more than one loan has been raised under this Act by the same local authority, the sums for the time being due or authorised to be raised on or in respect of any securities issued in respect of each loan shall take priority according to the date of such loan.

Where any sum of money is authorised to be borrowed in manner provided by this Act, such sum may, unless it is otherwise prescribed, be raised under this Act as one loan or several loans, as may be deemed most convenient by the borrowing authority, so that the aggregate amount authorised to be borrowed be not exceeded.

The date of each loan shall, with a view to the priority of the loan and to the period within which such loan is to be discharged, and for the other purposes of this Act, so far as relates to that period, be fixed by the local authority, and may be so fixed irrespectively of the dates of the particular securities issued in respect of such loan, so that the period within which the loan is required to be discharged be not exceeded.

(6.) *Notice of Trusts.*

Notice of  
trust not  
receivable.

IX. No notice of any trust, expressed, implied, or constructive, shall be received by the local authority, or by any registrar or officer of the local authority, in relation to any security issued by such authority under this Act.



X. A person advancing any money to a local authority and receiving in consideration of such advance any security under this Act, shall not be bound to inquire into the application of the money advanced, or be in any way responsible for the non-application or misapplication thereof.

Owners of securities not responsible for acts of local authority.

(7.) *Remedy for Non-payment.*

XI. The local authority shall pay or raise all sums for the time being due or authorised to be raised on or in respect of any security issued by them under this Act, and if default is made in payment of any sum so due, such sum shall be deemed to be a specialty debt due to the person entitled thereto from the local authority of such a nature that a mandamus will be granted to enforce the payment thereof; and an action may be brought accordingly, in which a mandamus may be claimed.

Remedy by mandamus for non-payment of money.

XII. Where a local authority makes default for a period of twenty-one days in paying an amount of not less than five hundred pounds (whether in one sum or separate sums) for the time being due on or in respect of any security issued under this Act, the persons entitled to the said amount or any of such persons, may, instead of or in addition to bringing an action or actions, apply to the county court for the appointment of a receiver, and any receiver so appointed (subject to any direction which may be given by the court) shall from time to time raise as hereinafter mentioned, by or out of the local rate or property charged, sufficient money to pay the amount the payment of which is so in default, and all sums due while he is receiver on or in respect of any such security, together with all costs charges and expenses incurred in or about the appointment of such receiver and the execution of his duties under this section, including a proper remuneration for his trouble, and shall render to the defaulting authority the balance, if any, remaining in his hands after making the said payments.

Remedy by appointment of receiver for non-payment of money

Where the amount so due or authorised to be raised is charged on the local rate, the receiver may raise the money he is authorised to raise under this section by means of the local rate, and for that purpose shall have the same power as the defaulting authority of levying the local rate, and the receiver shall have such access to and use of the documents of the defaulting authority relative to the local rate as he may require.

Where the amount so due or authorised to be raised is charged on any property other than the local rate, the receiver may raise the sum which he is authorised to raise under this section by receipt of the rents and profits of the property, and if the security involves a power of sale, as in this Act mentioned, by sale of the property in such manner and subject to such conditions of sale and otherwise as the court may direct.

A county court may appoint a receiver under this section with respect to any local rate levied, or any property situate wholly or partly within

the jurisdiction of such court, and may remove such receiver and appoint another in his stead, and so from time to time; and may make such orders and give such directions as to the powers and duties of the receiver, and otherwise as to the disposal of the moneys received by him, as may be thought fit for carrying this section into effect.

(8.) *Discharge of Loan.*

Loan borrowed to be discharged within prescribed period.

XIII. Every loan borrowed in manner provided by this Act shall be discharged within the prescribed period from the date thereof, and if no period is prescribed, within the period of twenty years from the date thereof, which period of twenty years shall for the purposes of this Act be included under the term "prescribed period," and such discharge shall be secured by one or more of the following methods; that is to say,

By the issue of annuity certificates limited to expire within the prescribed period; or,

By the issue of debentures made payable in such a manner that in each year such number of debentures will become due and be paid off as will secure the repayment of the whole sum secured by such debentures by equal annual instalments, extending over the whole of the prescribed period, or over a less time than the prescribed period; or,

By the annual appropriation, as in this Act mentioned, of a fixed sum to the discharge of a certain portion of such loan; or,

Where a sinking fund is prescribed, but not otherwise, by the establishment of a sinking fund and the application thereof in manner in this Act mentioned.

Discharge of loan by appropriation of annual sum.

XIV. Where a fixed annual sum is appropriated to the discharge of a loan, or part of a loan, the local authority shall raise in every year an equal sum of money of such amount as will, at or before the expiration of the prescribed period, pay off the whole of such loan or part of a loan, and the interest thereon. The local authority shall in each year pay out of such fixed sum the interest due on the loan or part of a loan during the current year, and appropriate the residue of such sum, in the case of money borrowed on debentures, to the payment off of a corresponding amount of the principal sum secured by such debentures, and in the case of money borrowed by the issue of debenture stock to the redemption of a corresponding amount of such stock.

The debentures or portion of debenture stock to be paid off in every year shall be ascertained in such manner as may have been fixed at the time of the issue of the debentures or debenture stock, or may thereafter have been arranged. Where the debentures or portion of debenture stock to be paid off are or is to be determined by lot, the lots shall be

drawn in presence of the local authority, and any owners of debenture or debenture stock who choose to be present; the local authority shall cause not less than one month's previous notice of the time and place at which lots are to be drawn to be given by advertisement, published once at the least in each of four successive weeks in some newspaper circulating in the district within which the local authority has jurisdiction.

Any fractional sum remaining of such residue as aforesaid, after payment of the debentures or debenture stock, payable as aforesaid, shall be carried to the credit of the annual sum to be raised in the ensuing year. All expenses incurred by the local authority in respect of any drawings by lot or otherwise in respect of the discharge of a loan shall be paid out of the current revenue of the local authority.

XV. Where a sinking fund is prescribed for any loan or part of a loan, the local authority shall create a sinking fund as hereinafter mentioned; that is to say,

Discharge  
of loan by  
sinking  
fund.

- (1.) Such equal yearly or half-yearly sums shall be paid into the sinking fund in each year as, being accumulated at compound interest at the prescribed rate, or if no rate is prescribed, at such rate as in the opinion of the local authority, (regard being had to the securities in which they are authorised to make investments,) will at the expiration of some period not longer than the prescribed period, be sufficient, after payment of all expenses, to discharge such loan or part of a loan; and,
- (2.) The first of such payments shall be made within one year from the date of the loan; and,
- (3.) All sums paid into the sinking fund shall be, as soon as may be, invested by the local authority in the prescribed manner, and if no manner is prescribed, or if a manner having been prescribed, the Local Government Board shall assent, in securities in which trustees are by law for the time being authorised to invest, or in debentures, debenture stock, or annuity certificates issued under this Act, and any such investments may be from time to time varied or transposed, and all dividends and other annual sums received in respect of such investments shall, as soon as may be after they are received, be paid into the sinking fund and invested by the local authority in like manner and,
- (4.) The local authority may from time to time apply the sinking fund, or any part thereof, in or towards the discharge of the loan or part of a loan for which it was created, and until such loan or part is wholly discharged shall not apply the same for any other purpose:
- (5.) The debentures or portion of debenture stock, to the payment of which such sinking fund is for the time being applicable,



shall be ascertained in such manner as may have been fixed at the time of the issue of the debentures or debenture stock, or may thereafter have been arranged. Where the debentures or portion of debenture stock to be paid off are or is to be determined by lot, the lots shall be drawn and notice shall be given in manner hereinbefore in this Act mentioned :

- (6.) Any surplus of the sinking fund remaining after the discharge of the loan or part of a loan for the discharge of which it was created shall be paid into some other sinking fund under the control of the local authority, or if there is no such fund shall be applied to any purpose to which such loan is applicable, or otherwise, as the local authority may, with the assent of the Local Government Board, think expedient :
- (7.) Where any part of the sinking fund is invested in any securities of the local authority, or is applied in paying off any part of the loan before the prescribed period, the interest which would otherwise be payable on such securities or on such part of the loan shall be paid into the sinking fund and invested in manner provided by this Act :
- (8.) If the annual income of the sinking fund is not less than the annual interest payable on so much of the loan or part of the loan in respect of which it was created as remains undischarged, the equal annual sums required by this section to be paid into the sinking fund may cease to be so paid.

Annual  
return as  
to sinking  
fund.

XVI. Where a sinking fund is created for the purpose of discharging any loan or part of a loan, the local authority shall, until such loan or part of a loan is discharged, within twenty-one days after the expiration of each year, transmit to the Local Government Board a return in such form and verified in such manner as the Board from time to time directs, showing the amount which has been invested or applied for the purpose of such sinking fund during the year next preceding the making of such return, and the description of the securities upon which any investment has been made, and the purposes to which any portion of the sinking fund has been applied during the same period, and the total amount (if any) remaining invested at the end of the year. If it appears to the Local Government Board, by such return or otherwise, that the local authority have failed to comply with the provisions of this Act with respect to the sinking fund, that Board may, if they think fit and after hearing the local authority, if desirous to be heard, by order direct that the sum in respect of which default has been made is to be raised and invested or applied as part of the sinking fund, and any such order may be enforced by mandamus.



## SUPPLEMENTAL PROVISIONS.

(1.) *As to Coupons.*

XVII. Coupons in respect of any debenture or stock certificate to bearer under this Act may be issued comprising the interest payable during the whole period of years for which the debenture or stock certificate is in force, or any less period, and at the expiration of any such less period fresh coupons may be issued in respect of the debenture or stock certificate, or such debenture or stock certificate may be exchanged for another debenture or stock certificate with coupons for a further period.

Tempo-  
rary issue  
of cou-  
pons.

XVIII. A coupon payable to order, which when presented for payment purports to be endorsed by the person named therein, shall be a sufficient authority to the person paying the money to pay the amount due in respect of such coupon to the bearer thereof, and it shall not be incumbent on the person paying such coupon to prove that such endorsement or any subsequent endorsement was made by or under the direction or authority of the person who is named in the coupon, or to whom the coupon was made payable by any endorser.

Endorse-  
ment and  
crossing of  
coupons.

Where a coupon bears across its face an addition in written, printed, or stamped letters of the name of any banker or of the words "and company" in full or abbreviated, between two transverse lines, such addition shall be deemed to be a material part of the coupon, and have the force of a direction to the person by whom such coupon is to be paid that the same is to be paid only to or through the banker named, or if none is so named, to or through some banker, and the same shall be payable only to or through the banker named or some banker.

XIX. Any coupons issued in respect of any debenture or stock certificate to bearer under this Act shall for the purpose of the Acts relating to stamp duties be deemed to have been attached to and issued with such security.

Coupons  
issued in  
respect of  
a security  
are ex-  
empt from  
stamp  
duty as if  
attached  
thereto.

(2.) *As to Stock Certificates.*

XX. The bearer of a stock certificate to bearer may, on delivery to the local authority of his certificate and of all unpaid coupons belonging thereto, require the local authority to enter him in the register of the local authority as an owner of the share of stock described in the stock certificate to bearer, and thereupon that stock shall become nominal debenture stock and the interest thereon shall be payable as if no stock certificate to bearer had been issued in respect of that share of stock.

Conver-  
sion into  
nominal  
debenture  
stock of  
stock in  
certificate  
to bearer.

Trustee  
not to  
apply for  
stock cer-  
tificate to  
bearer.

XXI. A trustee of debenture stock shall not apply for or hold a stock certificate to bearer unless authorised to do so by the terms of his trust, and any contravention of this provision by a trustee shall be deemed a breach of trust. But this provision shall not impose on the local authority an obligation to inquire whether a person applying for a stock certificate to bearer is or is not a trustee, or subject the local authority to any liability in the event of their issuing a stock certificate to bearer to a trustee, or invalidate any stock certificate to bearer issued.

(3.) *As to Execution and Supply of Securities.*

Execution  
and sup-  
ply of  
securities.

XXII. Every debenture, stock certificate to bearer, and annuity certificate under this Act shall be deemed to be well executed if under the common seal of the local authority, where that authority is a body corporate, and if signed by two or more members of the local authority, where the local authority is not a body corporate, or if otherwise executed in such manner as the Local Government Board may direct on the application of any local authority, whether corporate or unincorporate.

The Commissioners of Inland Revenue may, when required by any local authority, and on payment of such sum as may, with the sanction of the Treasury, be agreed upon, supply such authority with debentures, stock certificates to bearer, coupons, and annuity certificates under this Act in such form and of such materials as the local authority may direct.

(4.) *As to Register of Nominal Securities.*

Register  
of nominal  
securities.

XXIII. A local authority issuing nominal debentures, nominal debenture stock, or nominal annuity certificates under this Act, shall cause a register of such securities to be kept in one or more book or books, and there shall be entered in such register—

- (1.) The names and addresses and the descriptions of the owners for the time being of every such security, with a statement of the securities held by each person registered, and
- (2.) The date at which the name of any person was entered in the register in respect of any such security.

The register under this section shall be evidence of any matters by this Act directed or authorised to be inserted therein.

Inspection  
of  
register.

XXIV. Any person may inspect the register at any reasonable time upon payment of such fee not exceeding one shilling as may be fixed by the local authority, and shall be entitled to obtain from the register, copies or extracts certified by him to be true copies or extracts of such register, upon payment of such fee not exceeding two shillings and sixpence, and twopence for every folio of seventy-two words, as the local authority may from time to time fix, and any copy or extract so certified shall be admissible in evidence.

XXV. If the name of any person is without sufficient cause entered in or omitted from the register, or if default is made or unnecessary delay takes place in making any entry in such register, the person aggrieved or the local authority may apply to the court for an order that the register may be rectified.

Rectifica-  
tion of  
register.

The court may either refuse the application with or without costs to be paid by the applicant, or may, if satisfied of the justice of the case, whether there has or has not been any default on the part of the registrar, make an order for the rectification of the register, and make such order as to the payment of the costs of the application or of damages to the person aggrieved as to the court may seem just.

The court may, in any proceeding under this section, decide any question relating to the title of any party to such proceeding to have his name entered in or omitted from the register, and generally any question which it may be necessary or expedient to decide for the rectification of the register.

The court for the purposes of this section means any of Her Majesty's superior courts of law or equity, or any court to which the jurisdiction of such courts may be transferred, and where the value of any security or securities to which the application relates does not exceed fifty pounds shall include a county court, and the jurisdiction by this Act given to a superior court may be exercised in a summary manner by any judge or judges of such court sitting in chambers or otherwise.

(5.) *As to Loans under Official Sanction.*

XXVI. Any local authority about to raise a loan by the issue of any securities under this Act may apply to the Local Government Board to authorise the issue of such securities under official sanction.

Permis-  
sive issue  
of securi-  
ties under  
official  
sanction.

The Local Government Board, before granting their official sanction to such issue, shall require the local authority to furnish in such form, and with such particulars, and supported by such evidence as the Local Government Board may require, such returns of the financial condition of such authority and borrowing powers of such authority and of the indebtedness of such authority, whether incurred before or after the passing of this Act, and such other particulars as will enable the Local Government Board to ascertain the facts required by this section to be stated in relation to such issue, and the Local Government Board may make such examination or inquiries for ascertaining the said matters and the accuracy of such returns as they may think expedient, and they shall not give their sanction unless they are satisfied with the information given and the result of the inquiries made.

The issue of any securities under official sanction shall be authenticated by an official stamp on such securities or otherwise as the Local Government Board may from time to time direct.



The sanction of the Local Government Board given in respect of any securities shall be conclusive evidence that the local authority by whom such securities may be issued had power to issue the same, and that the same have been duly issued, and are as to form and otherwise in conformity with this Act.

The owner of any security issued under official sanction shall on request made by him to the Local Government Board be furnished with a statement of the following particulars ; that is to say,

Where a security is charged on a rate, of the rateable value, at the date of the issue of such security, of the property subject to the rate and where the security is a charge on property, of the estimated value of such property ; also of

The relative priority of the loan, in respect of which such security is issued, and of the other loans (if any) of the borrowing authority ; and such statement shall be evidence of the particulars therein stated.

(6.) *As to Investments on Loans under Act.*

Power for trustees to invest in loans under Act.

XXVII. Any trustees or other persons for the time being authorised or directed to invest any moneys in the debentures or debenture stock of any railway or other company shall, unless the contrary is provided by the instrument authorising or directing such investment, have the same power of investing such moneys in any nominal debentures or nominal debenture stock issued under this Act as they have of investing such moneys in debentures or debenture stock of any railway or other company as aforesaid.

Power for Public Works Loan Commissioners to take securities under Act.

XXVIII. When the Public Works Loan Commissioners are authorised to grant any loan to a local authority under any Act, passed either before or after the passing of this Act, and are satisfied with the sufficiency of the rates or other property on which such loan is charged to defray the loan, they may, notwithstanding anything contained in any other Act of Parliament, take debentures, debenture stock, or annuity certificates under this Act as a security for such loan.

(7.) *As to General Rules.*

Application of rules in schedule.

XXIX. The general rules in the schedule to this Act with respect to the transfer and transmission of nominal securities shall have the same force as if they were enacted in the body of this Act.

Power to make general rules.

XXX. The local authority may from time to time, with the consent of the Local Government Board, make, and when made, add to, rescind, or alter, such rules as they think fit with respect to the following matters :

(1.) The issue of coupons, the registry of securities, the mode of trans-



ferring securities not transferable by delivery, the fees, if any, to be charged in respect of registry and otherwise in respect of any security issued by them under this Act; and,

- (2.) With respect to any matter or thing required for the purposes of carrying into effect this Act, and not inconsistent therewith.

The local authority may also by such rules as aforesaid add to, rescind, or alter any of the rules in the schedule hereto.

Any general rules made by the local authority in pursuance of this section shall, so far as they are consistent with this Act, have the same force as if they were enacted therein.

Provided, that any rules made, added to, rescinded, or altered in pursuance of this section shall not affect any securities issued in respect of any loan the date of which is prior to the date of such making, addition, rescission, or alteration.

(8.) *As to Borrowing.*

XXXI. Any local authority, notwithstanding any provision in any other Act of Parliament passed before the passing of this Act, may, if it thinks fit, borrow in manner provided by this Act, any loan which it is authorised to borrow.

Borrowing and re-borrowing by local authorities.

Any local authority may from time to time in like manner re-borrow money for the purpose of discharging any loan lawfully contracted by them either before or after the passing of this Act; provided that the time for repayment of any money so borrowed shall not be extended beyond the unexpired portion of the term for which the original loan was contracted, unless with the sanction of the Local Government Board, and in no case shall be extended beyond the prescribed period.

(9.) *As to Forgery and Loss of Securities.*

XXXII. For the purposes of the Act of the session of the twenty-fourth and twenty-fifth years of the reign of Her present Majesty, chapter ninety-eight, intituled "An Act to consolidate and amend the Statute Law of England relating to indictable offences by forgery," debenture stock under this Act shall be deemed to be capital stock of a body corporate, and any other security issued in pursuance of this Act shall be considered to be a writing obligatory, and any coupon bearing across its face an addition in written, printed, or stamped letters of the name of any banker, or of the words "and company" in full or abbreviated, between two transverse lines, shall be deemed to be a cheque or draft on a banker.

Forgery of securities.

XXXIII. If any security issued under this Act is lost, mislaid, or destroyed, the local authority shall, on such indemnity being given as

Loss of securities.

they may require, and on payment of the expense of the issue, issue a fresh security in the place of the security so lost, mislaid, or destroyed.

(10.) *Definitions.*

Defini-  
tions.

XXXIV. For the purposes of this Act—

“Prescribed” means prescribed by any Act passed either before or after the passing of this Act authorising a local authority to borrow money :

“Local authority” means the justices of any county liberty riding parts or division of a county in general or quarter sessions assembled, the council of any municipal borough, also any authority whatsoever having power to levy a rate, as in this Act defined, also any prescribed authority :

“Municipal borough” means any borough for the time being subject to the Act of the session of the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intituled “An Act to provide for the regulation of municipal corporations in England and Wales,” and any Acts amending the same :

A “rate” means a rate the proceeds of which are applicable to public local purposes and leviable on the basis of an assessment in respect of property, and includes any sum which, though obtained in the first instance by a precept, certificate, or other document requiring payment from some authority or officer, is or can be ultimately raised out of a rate, and the levy of a rate includes the issue and enforcement of any such precept, certificate, or document as aforesaid, and expressions relating to the levy and the assessment and making of a rate shall be construed accordingly :

“Local rate” means any rate as before defined which a local authority have power to levy or charge by way of mortgage or otherwise :

“Security” means any debenture, debenture stock, annuity certificate, coupon, or stock certificate to bearer issued under this Act :

“Person” includes a body of persons corporate or unincorporate :

“Executors and administrators” includes successors.

(11.) *Repeal and consequential Enactment.*

Repeal of  
36 & 37  
Vict. c. 35.

XXXV. The County Debentures Act 1873 is hereby repealed, as from the commencement of this Act ; but this repeal shall not abridge or prejudicially affect the incorporation of any county authority under that Act, or any right in respect of any debenture issued in pursuance of that Act before the commencement of this Act, or any remedy for nonpayment of

moneys secured by any such debenture, and all such rights and remedies may be enforced as if this Act had not been passed.

XXXVI. The justices of any county, liberty, riding, parts, or division of a county in general or quarter sessions assembled, issuing any securities under this Act, shall, so far as relates to such securities, be deemed to be incorporated by the name of the justices of the county, liberty, riding, parts, or division of the county to which they belong, or by any other name by which such justices are ordinarily known, or by which they granted the said securities, and may sue and be sued in any action or other legal proceeding relating thereto by such corporate name.

Incorporation of county authority for purposes of Act.

## SCHEDULE.

### GENERAL RULES.

#### *Transfer of Nominal Securities.*

(1.) A number of persons, not exceeding such number as may from time to time be directed by the local authority, may be registered as joint owners of the same nominal security, with right of survivorship between them.

(2.) Unless otherwise directed by a general rule of the local authority, the instrument of transfer of any nominal security issued by a local authority shall be executed both by the transferor and transferee, and the transferor shall be deemed to remain owner of such security until the name of the transferee is entered in the register in respect thereof.

(3.) The transfer books of nominal securities may be closed at such times, not exceeding twice in each year, and not exceeding fourteen days at each time of closing, as the local authority may direct.

#### *Transmission of Nominal Securities.*

(4.) The executors or administrators of a deceased owner of a nominal security shall be the only persons recognised by the local authority as having any title to such security.

(5.) Any person becoming entitled to a nominal security in consequence of the death or bankruptcy of any owner, or in consequence of the marriage of any female owner, may be registered as owner upon such evi-

dence being produced as may from time to time be required by the local authority.

(6.) Unless otherwise directed by a rule of the local authority, any person who has become entitled to a nominal security in consequence of the death or bankruptcy of any owner, or in consequence of the marriage of any female owner, may, instead of being registered himself, elect to have some person to be named by him registered as a transferee of such security.

(7.) The person so becoming entitled shall testify such election by executing to his nominee an instrument of transfer of such security.

(8.) The instrument of transfer shall be presented to the local authority, accompanied with such evidence as the local authority may require to prove the title of the transferor, and thereupon the local authority shall register the transferee as owner.

(9.) In the construction of this schedule the term "nominal security" means any nominal debenture, nominal debenture stock, or nominal annuity certificate.



38 & 39 VICT. c. 89.

An Act to consolidate with Amendments the Acts relating to  
Loans for Public Works. [13th August 1875.]

The Acts relating to the Public Works Loan Commissioners (nearly 30 in number) were consolidated by the Public Works Loan Act 1875. As local authorities under the Public Health Act 1875 are empowered to borrow from the Commissioners, the provisions of the first mentioned Act are, so far as necessary, printed below.

\* \* \* \* \*

*Public Works Loan Commissioners.*

Sections IV. to VIII. provide for the constitution, etc., of the Public Works Loan Commissioners.

*Objects, Terms, and Duration of Loan.*

IX. The Loan Commissioners may, if they think it expedient, from time to time, in manner mentioned in this Act, make loans, for the purpose of any of the works mentioned in the first schedule to this Act, to any person having power under an Act of Parliament or otherwise to borrow for such purpose.

Loans for public works.

The Loan Commissioners in considering the propriety of granting a loan shall have regard to the sufficiency of the security for its repayment, and, subject to the provisions of any special Act, shall determine whether the work for which the loan is asked would be such a benefit to the public as to justify a loan out of public money, having regard to the amount of money placed at their disposal by Parliament.

X. Every loan granted under this Act shall bear interest at a rate not less than the rate authorised by a special Act relating to such loan, or if no rate be so authorised, not less than five per cent. per annum; provided that when the aggregate amount of principal moneys due by any harbour authority to the Commissioners under "The Harbours and Passing Tolls, etc. Act 1861," exceeds one hundred thousand pounds, the rate of interest on such excess shall be three and a half per cent., or such higher rate, not exceeding five per cent., as may in the judgment of the Treasury be necessary to enable the loan to be made without loss to the Exchequer.

Interest on loan.

Term of  
years for  
repay-  
ment of  
loan.

XI. Every loan granted under this Act shall be made repayable by instalments (in the form of an annuity or otherwise) within a period from the date of the actual advance of such loan, not exceeding the period authorised by a special Act relating to such loan, or if no period be so authorised, not exceeding twenty years.

Where a loan has been granted repayable within a period less than the full period allowed by the foregoing provisions of this section, the Loan Commissioners, if the repayment of the loan with interest is in their opinion sufficiently secured by such security as is required by this Act, and if they think fit, may extend the period for the repayment of such loan to a period not exceeding the said full period from the date of the advance of such loan.

Where no period is authorised by a special Act relating to the loan, the Treasury, on the recommendation of the Loan Commissioners, stating special circumstances, may either before or after the grant of the loan extend the period within which the loan is to be repaid to such period as may be recommended by the Loan Commissioners.

The Loan Commissioners in considering whether the period for the repayment of a loan should or should not be the said full period, and the Loan Commissioners and the Treasury in considering whether the period should be extended as aforesaid, shall have regard to the durability of the work for the purpose of which the loan is granted, and to the expediency of the cost of the work being paid by the generation of persons who will immediately benefit by such work.

The first instalment for the repayment of every loan shall be made payable within a period not exceeding five years from the date of the advance of such loan.

Security  
for loans.

XII. The Loan Commissioners before advancing any money on account of a loan shall take security for the repayment of the loan with the interest, consisting of the security authorised by the special Act relating to the loan, or if none is so authorised, of a mortgage of property or of a rate, or of both property and a rate, and (save as hereinafter mentioned) of personal security.

The Loan Commissioners may, if they think fit, dispense with personal security in any case in which in their opinion the mortgaged property or rate is sufficient security for the payment of the principal and interest of the loan within the stipulated period.

#### *Funds for Loans.*

Annual  
estimate  
of amounts  
required.

XIII. For the purpose of passing an annual Act of Parliament, granting money for the purpose of loans by the Loan Commissioners, every intending borrower shall send to the Commissioners on or before the thirty-first day of December in every year a statement of the new loan or

instalments of a loan already granted which the sender will probably apply to borrow during the ensuing financial year; and the Commissioners shall as soon as practicable submit all such statements to the Treasury, with such observations thereon and information respecting the same as they may think expedient, and as may be necessary for enabling the Treasury to lay before the House of Commons an estimate of the amount required to be granted for the purpose of loans by the Loan Commissioners.

The Loan Commissioners shall not, except with the permission of the Treasury, grant any loan or advance any instalment of a loan which has not been included in such a statement as above mentioned.

The Treasury, if they think that after providing for the loans and instalments included in the said statements, or such of them as will actually be advanced, there will be a balance out of the sum granted by Parliament sufficient to meet any loan or instalment not included in the statements, may, if they think fit, grant such permission, and may grant it conditionally upon the said balance being in their opinion sufficient when the time for the actual payment arrives.

If the regulations under this Act require quarterly statements to be sent by borrowers of the amounts which will be required by such borrowers, the Treasury may, if they think fit, refuse to issue in any quarter of a financial year any larger sum than the total of the amounts named in the statements referring to such quarter.

\* \* \* \* \*

#### *Recovery of Loans.*

XVIII. Where a loan is granted by the Loan Commissioners on the security of a mortgage of any property (whether with or without any other security), the property from and after the date of the mortgage shall be charged with the payment to the use of Her Majesty of the Loan with interest as in the mortgage mentioned, in priority, save so far as otherwise specified in the mortgage, over every other debt mortgage or charge whatsoever affecting the property, except any loan due to any creditor not assenting to such priority which has been advanced in good faith before the loan advanced by the commissioners and secured by a mortgage of the property executed to a person who is entitled as a bonâ fide creditor to the repayment thereof with interest.

Charge on property and priority of loan by the Commissioners

Provided that if there is more than one such creditor and not less than four fifths in value of such creditors consent in writing that the said charge shall have priority over the loans and mortgages of such creditors in such case the loans and mortgages of all such creditors, as well those who have not agreed as those who have agreed, shall be postponed to the loan granted by the commissioners and to the said charge thereof, and to the security for the same.



Nothing in any special Act and no rule of law or custom shall affect the priority given by this section, except so far as the special Act negative such priority in terms expressly referring to this Act.

Charges  
on rate of  
loan and  
loan not  
to be re-  
pudiated  
by locality  
having  
had the  
benefit of  
it.

XIX. Where a loan is granted by the Loan Commissioners on the security of a mortgage of any rate (whether with or without any other security), such rate from and after the date of the mortgage shall be charged with the payment to the use of Her Majesty of the loan with interest as in the mortgage mentioned.

Where the loan has been granted to any borrower who appeared to the Commissioners to have power to levy and mortgage such rate and has been expended upon the work in respect of which or in or for the benefit of the locality in which such rate or any part thereof is levied, the mortgage of the rate for securing the repayment of the loan with interest shall be valid, and may be enforced in pursuance of this Act, notwithstanding any defect in the power or title of the borrower by whom the mortgage purports to be granted; and in particular the commissioners may, although such borrower was not legally constituted or is dissolved, or is otherwise incapable and always was incapable of making levying or mortgaging such rate, have the same power of making and levying and enforcing the making or levying the said rate for the purpose of repaying such loan and interest, and all other sums due under the mortgage, as if such borrower had been duly constituted, and was not dissolved, and had had full power to make levy and mortgage such rate.

Securities  
to be taken  
in name  
of secre-  
tary.

XX. All securities for any loan granted by the Loan Commissioners in pursuance of this Act may be given to the secretary of the Commissioners on their behalf. Every such security is in this Act referred to as a security given to the Commissioners.

Taking  
possession  
by Com-  
missioners  
of pro-  
perty on  
default of  
payment.

XXI. Where a mortgage of property has been given to secure any loan granted by the Loan Commissioners, and default is made in making payment according to the terms of such mortgage, then at any time after such default and without any consent on the part of any person interested in the equity of redemption of the mortgaged property, the Commissioners, without prejudice to any other remedy, shall have power to do all or any of the following things; namely,

- (1.) Take possession of the mortgaged property, or any part thereof; and
- (2.) Grant any lease of the mortgaged property, or any part thereof, for such term and upon such reasonable conditions as they may think expedient, and that either for a premium or rent, or both; and
- (3.) Sell or mortgage the mortgaged property, or any part thereof.

XXII. (Powers of Commissioners when in possession.)



XXIII. Where a loan made by the Commissioners is secured by the mortgage of a rate (whether with or without any other security), and the commissioners might, if such loan were secured upon a mortgage of property, take possession of such property, the Commissioners may, without prejudice to any other remedy, by notice in writing served at the office or last known place of address of the mortgagor, or where from any cause the same cannot be so served by notice in writing published in the prescribed manner, declare their intention to exercise the powers conferred by this Act, and thereupon the Commissioners shall have and may exercise the same power as the mortgagor of making and levying the rate mortgaged, and for that purpose the Commissioners or their secretary with their concurrence may appoint an officer who, subject to the direction of the Commissioners, shall have and may exercise the same powers authorities and duties as if he had been appointed by the mortgagor.

Powers in relation to rate where default made.

The Commissioners, in making an estimate of the rate to be levied for the purpose of paying any sum due, may add such sum as they think sufficient for defraying and may defray thereout all costs charges and expenses, including remuneration to any officer or other person employed, incurred by the Commissioners in the execution of their powers under this section or otherwise by reason of the default in payment.

Any balance remaining in the hands of the Commissioners shall be paid by them to the mortgagor.

The Commissioners may, by a like notice, declare their intention to relinquish the powers conferred by this section, and that either absolutely or with reservations and conditions, and thereupon all such powers shall revert in the mortgagor, subject to the said reservations and conditions.

XXIV. (Liability of commissioners after taking possession or in default of payment.

XXXV. (Sale and mortgage by Commissioners of mortgaged premises.)

XXVI. (Purchaser not liable to see to the validity of sale or application of money.)

XXVII. (Terms of lease sale or mortgage.)

XXVIII. (Application of money arising on taking possession sale mortgage etc. by Commissioners.)

XXIX. The Loan Commissioners may, if they think fit, at any time accept payment of the whole or any part of the principal and interest of any loan or other moneys secured by any mortgage under this Act before the time when the same is due; and may release or convey the mortgaged

Payment of loan before it is due, and transfer of security

for all or  
part of  
loan.

property or rate to the person paying the same, or as he may direct, upon such terms and conditions and in such manner and form as the Commissioners may think expedient.

The person in whose favour any conveyance of the mortgaged property or rate under this section is made shall, subject to any limitations inserted therein, be entitled to the like priorities powers and authorities as the Commissioners or their secretary were entitled to, either subject to or with priority over or concurrently with any priorities powers and authorities reserved to the Commissioners by the conveyance.

The Commissioners shall have full power to enter into and concur in all such arrangements as they may deem expedient for the purposes of carrying into effect a release or conveyance under this section.

Discharge  
of security  
and revest-  
ing of pro-  
perty on  
repayment  
of loan.

XXX. Upon all money due under a mortgage under this Act being fully paid the Commissioners shall, when required, give in the prescribed manner to the person liable to the payment thereof a receipt in writing for the same, and such further sufficient discharge (if any) as may seem to the Commissioners to be necessary, and upon such receipt being given the mortgaged rate shall be released from the charge and the mortgaged property or the part thereof not sold or disposed of under this Act shall (unless the Commissioners, on the request and at the expense of the person paying the said money, make any other disposition thereof) revert in the person who would have been entitled thereto if the mortgage had not been made, subject nevertheless to any lease mortgage or other act previously made or done by or under the direction of the Commissioners.

XXXI. (Bankruptcy of debtor.)

XXXII. (Form of mortgage.)

XXXIII. (Recovery of debt on personal security.)

Recovery  
of loan  
after the  
expiration  
of term  
for repay-  
ment.

XXXIV. The expiration of the period within which a loan under this Act is made repayable (whether such period is the full period allowed by this or the special Act or a shorter period) shall not in any way affect any power of the Loan Commissioners of recovering or enforcing payment of any sum due in respect of such loan.

#### *Supplemental Provisions as to Loans and Securities.*

Security  
for com-  
pletion of  
works  
partly  
finished or  
not com-  
menced.

XXXV. Where the Commissioners grant a loan in aid of any work which is either partly completed or not commenced, they may, by a bond to Her Majesty or otherwise, take such security for the application of the loan to the work, and for the due completion of the work (including the raising of sufficient funds for that purpose), as they may think sufficient for securing the interest of the public.

XXXVI. Where the Loan Commissioners advance any loan for any purpose on the security of a rate, it shall be the duty of the Local Government Board to satisfy themselves that the loan is applied to such purpose; they may from time to time make such examination as they may think necessary with a view to ascertain that such loan has been so applied.

Examination as to proper application of moneys lent.

The Local Government Board may appoint any officer to conduct on their behalf any examination under this section, and such officer shall have the same powers to require the attendance of persons and the production of accounts and other documents, so far as such attendance or production is required for the purpose of such examination, as an inspector of the Local Government Board has under the Acts relating to the relief of the poor.

XXXVII. The Treasury may, on the recommendation of the Loan Commissioners, postpone for any time not exceeding five years the payment of the instalments of principal and interest, or either, due or to become due in respect of a loan granted by the Commissioners for the purpose of any work, and that upon such terms and conditions for the completion and improvement of such work, and the ultimate payment of such principal and interest, as the Treasury may on the said recommendation authorise.

Suspension of payment of principal and interest.

XXXVIII. The Loan Commissioners may, subject to the prescribed regulations, if under the circumstances of the case they think fit, accept any security in lieu of any security previously given to them, or of any part of such security, and that subject to such terms and conditions as they direct; so, however, that the substituted security shall be of the character which the Commissioners might take if the loan were originally granted at the time of such substitution, and that no change of security under this section shall extend the period for the repayment of the loan.

Change of security.

XXXIX. The Loan Commissioners may concur in any lease conveyance release or other disposition of any property mortgaged under this Act, or any part thereof, and in the arrangements relative thereto, upon such terms and conditions as they may think fit, and either with or without consideration, so that in their opinion the payment, with interest, of the loan charged on the mortgaged property is sufficiently secured or is not thereby made less secure.

Concurrence by Commissioners in leases, sales, etc. of mortgaged property.

*Special Provisions as to Borrowers.*

\* \* \* \* \*



*Miscellaneous.*

\*            \*            \*            \*            \*            \*

Applica-  
tion of Act  
to loans  
under  
special  
Acts.

L. Except so far as a special Act, by express reference to some part of this Act, alters that part, every loan made by the Loan Commissioners shall, notwithstanding any provision in such special Act and any rule of law or custom, be made in accordance with and under the powers of this Act, and be repayable in manner provided by this Act, and by the security for the same granted under this Act, and every such loan, together with the security for the same, shall have the priority and be subject to the powers authorities and remedies mentioned in this Act; and although made in pursuance of a special Act, shall be deemed for all purposes to be a loan under this Act.

*Temporary Provisions and Repeal.*

\*            \*            \*            \*            \*            \*

Sending  
of state-  
ments and  
making of  
regula-  
tions  
before  
com-  
mence-  
ment of  
Act.

LIV. The first statement of the probable requirements of new loans or instalments of a loan to be sent by persons intending to borrow from the Loan Commissioners shall be sent on or before the thirty-first day of December one thousand eight hundred and seventy-five.

Regulations under this Act may be made by the above-named Commis-  
sioners at any time after the passing of this Act.

The first report of the Loan Commissioners shall be made out up to the end of the financial year ending on the thirty-first day of March one thousand eight hundred and seventy-six, and shall relate to the trans-  
actions of the Loan Commissioners under the Acts repealed by this Act.

Reference  
in Acts to  
repealed  
Acts.

LV. A reference in any Act to any enactment hereby repealed, or to the Commissioners for the execution of any Act hereby repealed shall, so far as is consistent with the tenor thereof, be deemed to refer to the cor-  
responding enactment in this Act and to the Public Works Loans Com-  
missioners under this Act.

Saving for  
loans and  
transac-  
tions  
under re-  
pealed  
Acts.

LVI. Save as otherwise provided by this Act this Act shall apply only to loans granted and securities made after the commencement of this Act.

The Loan Commissioners shall have the same power of making further advances on any mortgage made before the commencement of this Act and intended to secure more than the sum which has actually been ad-  
vanced thereon as they would have had under the Acts repealed by this Act if they had not been repealed, but such advances shall be made out of money issued under this Act.

The Loan Commissioners on granting any new loan to persons by whom a loan granted before the commencement of this Act is still owing,



may make it a condition of the grant of such new loan that the old loan shall be deemed to have been granted in pursuance of this Act, and on such condition being accepted the old loan shall be deemed to be a loan under this Act.

For the purpose of any loans granted and securities made before the commencement of this Act, the Loan Commissioners under this Act and their secretary and other officers for the time being shall be deemed to be the same commissioners secretary and officers as the commissioners secretary and officers under the Acts in pursuance of which such loan was granted and securities made, and all securities and documents relating to such commissioners secretary and officers shall be construed accordingly.

#### LVII. (Repeal of Acts.)

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### SCHEDULES.

#### FIRST SCHEDULE.

*Works for the Purpose of which the Commissioners may lend Money.*

Baths and wash-houses provided by local authorities.

Burial grounds provided by burial boards, or (in Scotland) by burial boards or parochial boards.

Conservation or improvement of rivers or main drainage.

Docks.

Harbours and piers, and any work for which the Public Works Loan Commissioners are authorised to lend by section three of the Harbours and Passing Tolls etc. Act 1861. 24 & 25  
Vict. c. 47.

Improvement of towns.

Labourers' dwellings.

Lighthouses, floating and other lights for the guidance of ships buoys and beacons.

Lunatic asylums of any county or borough in Great Britain, or of any district or parochial board in Scotland.

Police stations and justices rooms of any county or borough in Great Britain, and the offices connected therewith, also sheriff court buildings in Scotland.

Prisons.

Public libraries and museums.

Any schoolhouse or work for which a school board is authorised to

33 & 34  
 Vict. c. 70. borrow under the Elementary Education Acts 1870 and 1873, or any Act  
 36 & 37 amending the same, or under the Education (Scotland) Act 1872.  
 Vict. c. 86. Waterworks established or carried on by a sanitary or other local  
 35 & 36 authority.  
 Vict. c. 62.

Workhouses or poorhouses, and any work for which the guardians of the poor, or (in Scotland) any parochial board, are authorised to borrow under the general Acts relating to the relief of the poor.

Any work for which a sanitary authority are authorised to borrow under the Public Health Act 1875.

25 & 26  
 Vict. c. 101. Any work for which police commissioners are authorised to borrow under the General Police and Improvement (Scotland) Act, 1862, and any Act amending the same.

30 & 31  
 Vict. c. 101. Any work for which a local authority are authorised to borrow under the Public Health (Scotland) Act 1867, or any Act amending the same.

Any work for which the Commissioners are authorised to lend by any Act passed after the passing of this Act.

## SECOND SCHEDULE.

*Form of Declaration.*

## THIRD SCHEDULE.

*Acts Repealed.*

## A P P E N D I X   I I I .

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ORDERS ISSUED BY THE LOCAL GOVERNMENT  
BOARD UNDER THE ACTS RELATING TO THE  
PUBLIC HEALTH ETC.

1. Order as to Medical Officers of Health appointed by Urban Sanitary Authorities.
2. Order as to Inspectors of Nuisances appointed by Urban Sanitary Authorities.
3. Order as to Medical Officers of Health appointed by Rural Sanitary Authorities.
4. Order as to Inspectors of Nuisances appointed by Rural Sanitary Authorities.
5. Cholera Order 1873.
6. Order as to Remuneration for Taxation of Costs.
7. Instructions in relation to Byelaws.
8. Opinion of Law Officers as to definition of Common Lodging House.



ORDERS ISSUED BY THE LOCAL GOVERNMENT  
BOARD UNDER THE ACTS RELATING TO THE  
PUBLIC HEALTH ETC.

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REGULATIONS AS TO MEDICAL OFFICERS OF HEALTH  
APPOINTED BY URBAN SANITARY AUTHORITIES, ANY  
PORTION OF WHOSE SALARY IS PAID OUT OF MONEYS  
VOTED BY PARLIAMENT.

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*TO the several Urban Sanitary Authorities in England and Wales  
constituted by the Public Health Act 1872 ;—And to all others  
whom it may concern.*

WHEREAS by section X. of “The Public Health Act 1872,” it is enacted that it shall be the duty of every urban sanitary authority to appoint from time to time a medical officer of health, being a legally qualified medical practitioner, and that the Local Government Board shall have the same powers as they have in the case of a district medical officer of a Union, with regard to the qualification, appointment, duties, salary, and tenure of office of a medical officer of health, any portion of whose salary is paid out of moneys voted by Parliament ;

And whereas it is thereby further enacted, that the same person may, with the sanction of the Local Government Board, be appointed the medical officer of health for two or more sanitary districts, by the joint or several appointment of the sanitary authorities of such districts :

Sections 190 and 191 of the Act of 1875 are substituted for s. 10 of the Act of 1872, and empower the Local Government Board to prescribe the qualification and duties of medical officers, whether part of their salary is paid out of moneys voted by Parliament or not.

Now we, the Local Government Board, deeming it expedient that regulations should be made with respect to the qualification appointment duties salary and tenure of office of medical officers of health, to be appointed by urban sanitary authorities, in all those cases where any portion of the salary of any such officer is paid out of moneys voted by parliament, do hereby order and direct as follows :

SECTION I.—*Qualification.*

Art. 1.—No person shall be qualified to be appointed to the office of medical officer of health under this order, unless he shall be registered under “The Medical Act of 1858,” and shall be qualified by law to practise both medicine and surgery in England and Wales, such qualification being established by the production to the sanitary authority of a diploma, certificate of a degree, license, or other instrument granted or issued by competent legal authority in Great Britain or Ireland, testifying to the medical or surgical, or medical and surgical, qualification or qualifications of the candidate for such office.

Provided that the Local Government Board may, upon the application of the sanitary authority, dispense with so much of this regulation as requires that the medical officer of health, shall be qualified to practise both medicine and surgery, if he is duly registered under the said Act to practise either medicine or surgery.

SECTION II.—*Appointment.*

Art. 1.—A statement shall be submitted to the Local Government Board, showing the population and extent of the district for which the sanitary authority propose to appoint the medical officer of health, and the salary or remuneration intended to be assigned to him; and where the circumstances render desirable the appointment of one medical officer of health for two or more sanitary districts, statements shall, in like manner, be submitted to the Local Government Board, showing the names of the districts to be combined for that purpose, the population and extent of each district, the mode in which it is intended that the appointment shall be made, whether jointly or severally by the sanitary authorities of those districts, and the amount of salary or remuneration proposed to be assigned to the officer appointed.

Art. 2.—When the approval of the Local Government Board has been given to the proposals submitted to them, the sanitary authority or authorities shall proceed to the appointment of a medical officer of health accordingly.

Art. 3.—No appointment of a medical officer of health shall be made hereafter, unless an advertisement giving notice of the day when such appointment will be made shall have appeared in some public newspaper circulating in the district or districts, at least seven days before the day on which such appointment is made: Provided that no such advertisement shall be necessary for the appointment of a temporary substitute.

Art. 4.—Every such appointment hereafter made shall, within seven

days after it is made, be reported to the Local Government Board by the clerk to the sanitary authority, or, in the case of a joint appointment, by the clerk to one of the sanitary authorities by whom the appointment is made.

Art. 5.—Upon the occurrence of a vacancy in such office, the sanitary authority or authorities shall proceed to make a fresh appointment, which shall be reported to the Local Government Board as required by sect. II. art. 4 of this order; but if the sanitary authority or authorities desire to make any fresh arrangement with respect to the district or the terms of the appointment, they shall, before filling up the vacancy, supply the particulars of the arrangement to the Local Government Board in the manner prescribed by sect II. art 1, in regard to the first appointment, and if the approval of the Local Government Board be given, absolutely or with modifications, the sanitary authority or authorities shall then proceed to fill up the vacancy according to the terms of the approval so given.

Art. 6.—If any officer appointed under this order be at any time prevented by sickness or accident, or other sufficient reason, from performing his duties, the sanitary authority or authorities, as the case may be, may appoint a person qualified as aforesaid to act as his temporary substitute, and may pay him a reasonable compensation for his services; and every such appointment shall be reported to the Local Government Board as soon as the same shall have been made.

### SECTION III.—*Tenure of Office.*

Art. 1.—Every officer appointed under this order shall continue to hold office for such period as the sanitary authority or authorities appointing him may, with the approval of the Local Government Board determine, or until he die, or resign, or be removed, by such authority or authorities with the assent of the Local Government Board, or by the Local Government Board.

Provided that the appointments first made under this order shall not be for a period exceeding five years.

Art. 2.—Where any such officer shall have been appointed after the passing of the Public Health Act 1872, for one or more sanitary districts, and any change in the extent of the district or districts, or in the duties salary or remuneration may be deemed necessary, and he shall decline to acquiesce therein, the sanitary authority or authorities by whom he was so appointed may, with the consent of the Local Government Board, but not otherwise, and after six months' notice in writing, signed by their clerk or clerks, given to such officer, determine his office.

Art. 3.—No person shall be appointed who does not agree to give one month's notice previous to resigning the office, or to forfeit such sum as may be agreed upon as liquidated damages.

SECTION IV.—*Duties.*

The following shall be the duties of the medical officer of health in respect of the district for which he is appointed: or if he shall be appointed for more than one district, then in respect of each of such districts:—

- (1.) He shall inform himself as far as practicable respecting all influences affecting or threatening to affect injuriously the public health within the district.
- (2.) He shall inquire into and ascertain by such means as are at his disposal the causes, origin, and distribution of diseases within the district, and ascertain to what extent the same have depended on conditions capable of removal or mitigation.
- (3.) He shall by inspection of the district, both systematically at certain periods, and at intervals as occasion may require, keep himself informed of the conditions injurious to health existing therein.
- (4.) He shall be prepared to advise the sanitary authority on all matters affecting the health of the district, and on all sanitary points involved in the action of the sanitary authority or authorities; and in cases requiring it, he shall certify, for the guidance of the sanitary authority or of the justices, as to any matter in respect of which the certificate of a medical officer of health or of a medical practitioner is required as the basis or in aid of sanitary action.
- (5.) He shall advise the sanitary authority on any question relating to health involved in the framing and subsequent working of such byelaws and regulations as they may have power to make.
- (6.) On receiving information of the outbreak of any contagious, infectious, or epidemic disease of a dangerous character within the district, he shall visit the spot without delay and inquire into the causes and circumstances of such outbreak, and advise the persons competent to act as to the measures which may appear to him to be required to prevent the extension of the disease, and, so far as he may be lawfully authorised, assist in the execution of the same.
- (7.) On receiving information from the inspector of nuisances that his intervention is required in consequence of the existence of any nuisance injurious to health, or of any overcrowding in a house, he shall, as early as practicable, take such steps authorised by



the statutes in that behalf as the circumstances of the case may justify and require.

- (8.) In any caso in which it may appear to him to be necessary or advisable, or in which he shall be so directed by the sanitary authority, he shall himself inspect and examine any animal carcase meat poultry game flesh fish fruit vegetables corn bread or flour, exposed for sale, or deposited for the purpose of sale or of preparation for sale, and intended for the food of man, which is deemed to be diseased, or unsound, or unwholesome, or unfit for the food of man; and if he finds that such animal or article is diseased, or unsound, or unwholesome, or unfit for the food of man, he shall give such directions as may be necessary for causing the same to be seized, taken, and carried away, in order to be dealt with by a justice according to the provisions of the statutes applicable to the case.
- (9.) He shall perform all the duties imposed upon him by any byelaws and regulations of the sanitary authority, duly confirmed, in respect of any matter affecting the public health, and touching which they are authorised to frame byelaws and regulations.
- (10.) He shall inquire into any offensive process of trade carried on within the district, and report on the appropriate means for the prevention of any nuisance or injury to health therefrom.
- (11.) He shall attend at the office of the sanitary authority or at some other appointed place, at such stated times as they may direct.
- (12.) He shall from time to time report, in writing, to the sanitary authority, his proceedings, and the measures which may require to be adopted for the improvement or protection of the public health in the district. He shall in like manner report with respect to the sickness and mortality within the district, so far as he has been enabled to ascertain the same.
- (13.) He shall keep a book or books, to be provided by the sanitary authority, in which he shall make an entry of his visits, and notes of his observations and instructions thereon, and also the date and nature of applications made to him, the date and result of the action taken thereon and of any action taken on previous reports, and shall produce such book or books, whenever required, to the sanitary authority.
- (14.) He shall also prepare an annual report, to be made at the end of December in each year, comprising tabular statements of the sickness and mortality within the district, classified according to diseases ages and localities, and a summary of the action taken during the year for preventing the spread of disease, The report shall also contain an account of the preceedings in which he has taken part or advised under the Sanitary Acts

so far as such proceedings relate to conditions dangerous or injurious to health, and also an account of the supervision exercised by him, or on his advice, for sanitary purposes over places and houses that the sanitary authority has power to regulate, with the nature and results of any proceedings which may have been so required and taken in respect of the same during the year. It shall also record the action taken by him, or on his advice, during the year, in regard to offensive trades bakehouses and workshops.

- (15.) He shall give immediate information to the Local Government Board of any outbreak of dangerous epidemic disease within the district, and shall transmit to the Board, on forms to be provided by them, a quarterly return of the sickness and deaths within the district, and also a copy of each annual and of any special report.
- (16.) In matters not specifically provided for in this order, he shall observe and execute the instructions of the Local Government Board on the duties of medical officers of health, and all the lawful orders and directions of the sanitary authority applicable to his office.
- (17.) Whenever the Diseases Prevention Act of 1855 is in force within the district, he shall observe the directions and regulations issued under that Act by the Local Government Board, so far as the same relate to or concern his office.

See ss. 134-140 of the Public Health Act 1875, which now represent the Diseases Prevention Act of 1855.

#### SECTION V.—*Remuneration.*

Art. 1.—The sanitary authority or authorities, as the case may be, shall pay to any officer appointed under this order such salary or remuneration as may be approved by the Local Government Board; and where such officer is appointed for two or more districts, the salary shall be apportioned amongst the districts in such manner as the said Board shall approve.

Provided that the sanitary authority or authorities, with the approval of the Local Government Board, may pay to any such officer a reasonable compensation on account of extraordinary services, or other unforeseen circumstances connected with his duties or the necessities of the district or districts for which he is appointed.

Art. 2.—The salary or remuneration of every such officer shall be payable up to the day on which he ceases to hold the office, and no longer, subject to any deduction which the sanitary authority or authorities may be entitled to make in respect of sect. III. art. 3; and in case he shall die whilst holding such office, the proportion of salary (if

any) remaining unpaid at his death shall be paid to his personal representatives.

Art. 3.—The salary or remuneration assigned to such officer shall be payable quarterly, according to the usual feast days in the year, namely, Lady Day Midsummer Day Michaelmas Day and Christmas Day; but the sanitary authority or authorities may pay to him at the expiration of every calendar month such proportion as they may think fit on account of the salary or remuneration to which he may become entitled at the termination of the quarter.

Given under our seal of office, this eleventh day of November, in the year one thousand eight hundred and seventy-two.

JAMES STANSFELD,  
*President.*

JOHN LAMBERT,  
*Secretary.*

ORDER AS TO INSPECTORS OF NUISANCES APPOINTED BY  
URBAN SANITARY AUTHORITIES, ANY PORTION OF  
WHOSE SALARY IS PAID OUT OF MONEYS VOTED BY  
PARLIAMENT.

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TO the several urban authorities in England and Wales, constituted by the Public Health Act 1872 ;—And to all others whom it may concern.

WHEREAS by section VII. of “ The Public Health Act 1872,” it is enacted that, subject to the provisions of that Act, the duties imposed by previous “ Sanitary Acts,” including that of appointing inspectors of nuisances for the purposes of those Acts, shall be transferred to urban sanitary authorities constituted under the above-mentioned Act ;

And whereas it is enacted by section X. of the said Act that the Local Government Board shall have the same powers as they have in the case of a district medical officer of a union, with regard to the qualification appointment duties salary and tenure of office of officers of sanitary authorities, any portion of whose salary is paid out of moneys voted by Parliament ;

And whereas it is further enacted by the last mentioned section that the same person may, with the sanction of the Local Government Board, be appointed the inspector of nuisances for two or more sanitary districts, by the joint or several appointment of the sanitary authorities of such districts :

Now we, the Local Government Board, deeming it expedient that regulations should be made with respect to the appointment duties salary and tenure of office of inspectors of nuisances appointed by urban sanitary authorities, in all those cases where any portion of the salary of any such officer is paid out of moneys voted by Parliament, do hereby order and direct as follows :

See ss. 189 and 192 of the Public Health Act 1875. ]

SECTION I.—*Appointment.*

Art. 1.—A statement shall be submitted to the Local Government Board, showing the population and extent of the district for which the



sanitary authority propose to appoint the inspector of nuisances, and the salary or remuneration intended to be assigned to him; and where the circumstances render desirable the appointment of one inspector of nuisances for two or more sanitary districts, statements shall, in like manner, be submitted to the Local Government Board, showing the names of the districts to be combined for that purpose, the population and extent of each district, the mode in which it is intended that the appointment shall be made, whether jointly or severally by the sanitary authorities of those districts, and the amount of salary or remuneration proposed to be assigned to the officer appointed.

Art. 2.—When the approval of the Local Government Board has been given to the proposals submitted to them, the sanitary authority or authorities shall proceed to the appointment of an inspector of nuisances accordingly.

Art. 3.—No appointment of an inspector of nuisances shall be made under this order, unless an advertisement, giving notice of the day when such appointment will be made, shall have appeared in some public newspaper circulating in the district or districts, at least seven days before the day on which such appointment is made: Provided that no such advertisement shall be necessary for the appointment of a temporary substitute.

Art. 4.—Every such appointment hereafter made shall, within seven days after it is made, be reported to the Local Government Board by the clerk to the sanitary authority, or, in the case of a joint appointment, by the clerk to one of the sanitary authorities by whom the appointment is made.

Art. 5.—Upon the occurrence of a vacancy in such office, the sanitary authority or authorities shall proceed to make a fresh appointment, which shall be reported to the Local Government Board as required by sect. I. art. 4 of this order, but if the sanitary authority or authorities desire to make any fresh arrangement with respect to the district or the terms of the appointment, they shall, before filling up the vacancy, supply the particulars of the arrangement to the Local Government Board in the manner prescribed by sect. I. art. 1, in regard to the first appointment; and if the approval of the Local Government Board be given, absolutely or with modifications, the sanitary authority or authorities shall then proceed to fill up the vacancy according to the terms of the approval so given.

Art. 6.—If any officer appointed under this order be at any time prevented by sickness or accident, or other sufficient reason, from performing his duties, the sanitary authority or authorities, as the case may

be, may appoint a fit person to act as his temporary substitute, and may pay him a reasonable compensation for his services ; and every such appointment shall be reported to the Local Government Board as soon as the same shall have been made.

## SECTION II.—*Tenure of Office.*

Art. 1.—Every officer appointed under this order shall continue to hold office for such period as the sanitary authority or authorities appointing him may, with the approval of the Local Government Board, determine, or until he die or resign or be removed by such authority or authorities with the assent of the Local Government Board, or by the Local Government Board.

Provided that the appointments first made under this order shall not be for a period exceeding five years.

Art. 2.—Where any such officer shall have been appointed after the passing of the Public Health Act 1872, for one or more sanitary districts, and any change in the extent of the district or districts, or in the duties salary or remuneration, may be deemed necessary, and he shall decline to acquiesce therein, the sanitary authority or authorities by whom he was so appointed may, with the consent of the Local Government Board, but not otherwise, and after six months' notice in writing, signed by their clerk or clerks, given to such officer, determine his office.

Art. 3.—No person shall be appointed who does not agree to give one month's notice previous to resigning the office, or to forfeit such sum as may be agreed upon as liquidated damages.

## SECTION III.—*Duties.*

The following shall be the duties of the inspector of nuisances in respect of the district for which he is appointed, or if he shall be appointed for more than one district, then in respect of each of such districts :—

- (1.) He shall perform, either under the special directions of the sanitary authority, or (so far as authorised by the sanitary authority) under the directions of the medical officer of health, or in cases where no such directions are required, without such directions, all the duties specially imposed upon an inspector of nuisances by the Sanitary Acts, or by the orders of the Local Government Board.
- (2.) He shall attend all meetings of the sanitary authority when so required.
- (3.) He shall by inspection of the district, both systematically at certain periods, and at intervals as occasion may require, keep

himself informed in respect of the nuisances existing therein that require abatement under the Sanitary Acts.

- (4.) On receiving notice of the existence of any nuisance within the district, or of the breach of any byelaws or regulations made by the sanitary authority for the suppression of nuisances, he shall, as early as practicable, visit the spot, and inquire into such alleged nuisance or breach of byelaws or regulations.
  - (5.) He shall report to the sanitary authority any noxious or offensive businesses trades or manufactories established within the district, and the breach or non-observance of any byelaws or regulations made in respect of the same.
  - (6.) He shall report to the sanitary authority any damage done to any works of water supply, or other works belonging to them, and also any case of wilful or negligent waste of water supplied by them, or any fouling by gas filth or otherwise, of water used for domestic purposes.
  - (7.) He shall from time to time, and forthwith upon complaint, visit and inspect the shops and places kept or used for the sale of butchers' meat poultry fish fruit vegetables corn bread or flour, or as a slaughter-house, and examine any animal carcase meat poultry game flesh fish fruit vegetables corn bread or flour which may be therein : and in case any such article appear to him to be intended for the food of man, and to be unfit for such food, he shall cause the same to be seized, and take such other proceedings as may be necessary in order to have the same dealt with by a justice : Provided that in any case of doubt arising under this clause, he shall report the matter to the medical officer of health, with the view of obtaining his advice thereon.
  - (8.) He shall, when and as directed by the sanitary authority, procure and submit samples of food or drink and drugs suspected to be adulterated, to be analysed by the analyst appointed under the Adulteration of Food Act 1872, and upon receiving a certificate stating that the articles of food or drink or drugs are adulterated, cause a complaint to be made, and take the other proceedings prescribed by that Act.
- See now The Sale of Food and Drugs Act in App. II., *supra*.
- (9.) He shall give immediate notice to the medical officer of health of the occurrence within his district of any contagious infectious or epidemic disease of a dangerous character : and whenever it appears to him that the intervention of such officer is necessary in consequence of the existence of any nuisance injurious to

health, or of any overcrowding in a house, he shall forthwith inform the medical officer thereof.

- (10.) He shall, subject in all respects to the directions of the sanitary authority, attend to the instructions of the medical officer of health with respect to any measures which can be lawfully taken by him under the Sanitary Acts for preventing the spread of any contagious infectious or epidemic disease of a dangerous character.
- (11.) He shall enter from day to day, in a book to be provided by the sanitary authority, particulars of his inspections and of the action taken by him in the execution of his duties. He shall also keep a book or books, to be provided by the sanitary authority, so arranged as to form, as far as possible, a continuous record of the sanitary condition of each of the premises in respect of which any action has been taken under the Sanitary Acts, and shall keep any other systematic records that the sanitary authority may require.
- (12.) He shall at all reasonable times, when applied to by the medical officer of health, produce to him his books, or any of them, and render to him such information as he may be able to furnish with respect to any matter to which the duties of inspector of nuisances relate.
- (13.) He shall, if directed by the sanitary authority to do so, superintend and see to the due execution of all works which may be undertaken under their direction for the suppression or removal of nuisances within the district.
- (14.) In matters not specifically provided for in this order, he shall observe and execute all the lawful orders and directions of the sanitary authority and the orders of the Local Government Board which may be hereafter issued, applicable to his office.

#### SECTION IV.—*Remuneration.*

Art. 1.—The sanitary authority or authorities, as the case may be, shall pay to any officer appointed under this order such salary or remuneration as may be approved by the Local Government Board; and where such officer is appointed for two or more districts, the salary shall be apportioned amongst the districts in such manner as the said Board shall approve.

Provided that the sanitary authority or authorities, with the approval



of the Local Government Board, may pay to any such officer a reasonable compensation on account of extraordinary services, or other unforeseen circumstances connected with his duties or the necessities of the district or districts for which he is appointed.

Art. 2.—The salary or remuneration of every such officer shall be payable up to the day on which he ceases to hold the office, and no longer, subject to any deduction which the sanitary authority or authorities may be entitled to make in respect of sect. II. art. 3; and in case he shall die whilst holding such office, the proportion of salary (if any) remaining unpaid at his death shall be paid to his personal representatives.

Art. 3.—The salary or remuneration assigned to such officer shall be payable quarterly, according to the usual feast days in the year, namely, Lady Day Midsummer Day Michaelmas Day and Christmas Day; but the sanitary authority or authorities may pay to him at the expiration of every calendar month such proportion as they may think fit, on account of the salary or remuneration to which he may become entitled at the termination of the quarter.

Given under our seal of office, this eleventh day of November, in the year one thousand eight hundred and seventy-two.

JAMES STANSFELD,  
*President.*

JOHN LAMBERT,  
*Secretary.*

ORDERS AS TO MEDICAL OFFICERS OF HEALTH APPOINTED  
BY RURAL SANITARY AUTHORITIES, ANY PORTION OF  
WHOSE SALARY IS PAID OUT OF MONEYS VOTED BY  
PARLIAMENT.

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TO the Guardians of the Poor of the several Unions, Parishes, and Places in England and Wales, in which such Guardians act as a Rural Sanitary Authority under the Public Health Act 1872 ;—and to all others whom it may concern.

WHEREAS by section X. of “The Public Health Act 1872,” it is enacted that it shall be the duty of every rural sanitary authority to appoint from time to time a medical officer or officers of health, being legally qualified medical practitioners, and that the Local Government Board shall have the same powers, as they have in the case of a district medical officer of a union, with regard to the qualification appointment duties salary and tenure of office of a medical officer of health, any portion of whose salary is paid out of moneys voted by Parliament ;

And whereas it is thereby further enacted, that the same person may, with the sanction of the Local Government Board, be appointed the medical officer of health for two or more sanitary districts, by the joint or several appointment of the sanitary authorities of such districts :

Now we, the Local Government Board, deeming it expedient that regulations should be made with respect to the qualification appointment duties salary and tenure of office of medical officers of health, to be appointed by rural sanitary authorities, in all those cases where any portion of the salary of any such officer is paid out of moneys voted by Parliament, do hereby order and direct as follows :

See note to the regulations as to urban medical officers of health, *supra*.

SECTION I.—Qualification.

Art. 1.—No person shall be qualified to be appointed to the office of medical officer of health under this order, unless he shall be registered under “The Medical Act of 1858,” and shall be qualified by law to

practise both medicine and surgery in England and Wales, such qualification being established by the production to the sanitary authority of a diploma certificate of a degree licence or other instrument granted or issued by competent legal authority in Great Britain or Ireland, testifying to the medical or surgical, or medical and surgical, qualification or qualifications of the candidate for such office.

Provided that the Local Government Board may, upon the application of the sanitary authority, dispense with so much of this regulation as requires that the medical officer of health shall be qualified to practise both medicine and surgery, if he is duly registered under the said Act to practise either medicine or surgery.

## SECTION II.—*Appointment.*

Art. 1.—A statement shall be submitted to the Local Government Board, showing the population and extent of the district for which the sanitary authority propose to appoint a medical officer or medical officers of health, and the salary or remuneration intended to be assigned; and where the circumstances render desirable the appointment of one medical officer of health for two or more sanitary districts, statements shall, in like manner, be submitted to the Local Government Board, showing the names of the districts to be combined for that purpose, the population and extent of each district, the mode in which it is intended that the appointment shall be made, whether jointly or severally by the sanitary authorities of those districts, and the amount of salary or remuneration proposed to be assigned to the officer appointed.

Art. 2.—When the approval of the Local Government Board has been given to the proposals submitted to them, the sanitary authority or authorities shall proceed to the appointment of a medical officer or medical officers of health accordingly.

Art. 3.—No appointment of a medical officer of health shall be made, unless notice has been given at one of the two ordinary meetings next preceding the meeting or meetings at which the appointment is to be made by the sanitary authority or authorities, as the case may be, such notice being duly entered on the minutes, or unless an advertisement giving notice of the day when such appointment will be made shall have appeared in some public newspaper circulating in the district or districts, at least seven days before the day on which such appointment is made: Provided that no such notice or advertisement shall be necessary for the appointment of a temporary substitute.

Art. 4.—Every such appointment shall, within seven days after it is made be reported to the Local Government Board by the clerk to the

sanitary authority, or, in the case of a joint appointment, by the clerk to one of the sanitary authorities by whom the appointment is made.

Art. 5.—Upon the occurrence of a vacancy in such office, the sanitary authority or authorities shall proceed to make a fresh appointment, which shall be reported to the Local Government Board as required by sect. II. art. 4 of this order; but if the sanitary authority or authorities desire to make any fresh arrangement with respect to the district or the terms of the appointment, they shall, before filling up the vacancy, supply the particulars of the arrangement to the Local Government Board in the manner prescribed by sect. II. art. 1, in regard to the first appointment, and if the approval of the Local Government Board be given absolutely or with modifications, the sanitary authority or authorities shall then proceed to fill up the vacancy according to the terms of the approval so given.

Art. 6.—If any officer appointed under this order be at any time prevented by sickness or accident, or other sufficient reason, from performing his duties, the sanitary authority or authorities, as the case may be, may appoint a person, qualified as aforesaid, to act as his temporary substitute, and may pay him a reasonable compensation for his services; and every such appointment shall be reported to the Local Government Board as soon as the same shall have been made.

### SECTION III.—*Tenure of Office.*

Art. 1.—Every officer appointed under this order shall continue to hold office for such period as the sanitary authority or authorities appointing him may, with the approval of the Local Government Board, determine, or until he die or resign or be removed by such authority or authorities with the assent of the Local Government Board, or by the Local Government Board.

Provided that the appointments first made under this order shall not be for a period exceeding five years.

Art. 2.—Where any such officer shall be appointed for one or more sanitary districts, and any change in the extent of the district or districts, or in the duties salary or remuneration shall be deemed necessary, and he shall decline to acquiesce therein, the sanitary authority or authorities by whom he was so appointed may, with the consent of the Local Government Board, but not otherwise, and after six months' notice in writing, signed by their clerk or clerks, given to such officer, determine his office.

Art. 3.—No person shall be appointed who does not agree to give



one month's notice previous to resigning the office, or to forfeit such sum as may be agreed upon as liquidated damages.

#### SECTION IV.—*Duties.*

The following shall be the duties of a medical officer of health in respect of the sanitary district for which he is appointed ; or if he shall be appointed for more than one district, or for a part of a district, then in respect of each of such districts, or of such part :—

- (1.) He shall inform himself as far as practicable respecting all influences affecting or threatening to affect injuriously the public health within the district.
- (2.) He shall inquire into and ascertain by such means as are at his disposal the causes origin and distribution of diseases within the district, and ascertain to what extent the same have depended on conditions capable of removal or mitigation.
- (3.) He shall by inspection of the district, both systematically at certain periods, and at intervals as occasion may require, keep himself informed of the conditions injurious to health existing therein.
- (4.) He shall be prepared to advise the sanitary authority on all matters affecting the health of the district, and on all sanitary points involved in the action of the sanitary authority ; and in cases requiring it, he shall certify, for the guidance of the sanitary authority, or of the justices, as to any matter in respect of which the certificate of a medical officer of health or a medical practitioner is required as the basis or in aid of sanitary action.
- (5.) He shall advise the sanitary authority on any question relating to health involved in the framing and subsequent working of such byelaws and regulations as they may have power to make.
- (6.) On receiving information of the outbreak of any contagious infections or epidemic disease of a dangerous character within the district, he shall visit the spot without delay and inquire into the causes and circumstances of such outbreak, and advise the persons competent to act as to the measures which may appear to him to be required to prevent the extension of the disease, and, so far as he may be lawfully authorised, assist in the execution of the same.
- (7.) On receiving information from the inspector of nuisances that his intervention is required in consequence of the existence of any

nuisance injurious to health or of any overcrowding in a house, he shall, as early as practicable, take such steps authorised by the statutes in that behalf as the circumstances of the case may justify and require.

- (8.) In any case in which it may appear to him to be necessary or advisable or in which he shall be so directed by the sanitary authority, he shall himself inspect and examine any animal carcase meat poultry game flesh fish fruit vegetables corn bread or flour, exposed for sale, or deposited for the purpose of sale or of preparation for sale, and intended for the food of man, which is deemed to be diseased or unsound or unwholesome or unfit for the food of man; and if he finds that such animal or article is diseased or unsound or unwholesome or unfit for the food of man, he shall give such directions as may be necessary for causing the same to be seized taken and carried away, in order to be dealt with by a justice according to the provisions of the statutes applicable to the case.
- (9.) He shall perform all the duties imposed upon him by any byelaws and regulations of the sanitary authority, duly confirmed, in respect of any matter affecting the public health, and touching which they are authorised to frame byelaws and regulations.
- (10.) He shall inquire into any offensive process of trade carried on within the district, and report on the appropriate means for the prevention of any nuisance or injury to health therefrom.
- (11.) He shall attend at the office of the sanitary authority, or at some other appointed place, at such stated times as they may direct.
- (12.) He shall from time to time report, in writing, to the sanitary authority, his proceedings, and the measures which may require to be adopted for the improvement or protection of the public health in the district. He shall in like manner report with respect to the sickness and mortality within the district, so far as he has been enabled to ascertain the same.
- (13.) He shall keep a book or books, to be provided by the sanitary authority, in which he shall make an entry of his visits, and notes of his observations and instructions thereon, and also the date and nature of applications made to him, the date and result of the action taken thereon, and of any action taken on previous reports, and shall produce such book or books, whenever required, to the sanitary authority.
- (14.) He shall also prepare an annual report, to be made to the end of December in each year, comprising tabular statements of the

sickness and mortality within the district, classified according to diseases ages and localities, and a summary of the action taken during the year for preventing the spread of disease. The report shall also contain an account of the proceedings in which he has taken part or advised under the Sanitary Acts, so far as such proceedings relate to conditions dangerous or injurious to health, and also an account of the supervision exercised by him, or on his advice, for sanitary purposes over places and houses that the sanitary authority has power to regulate, with the nature and results of any proceedings which may have been so required and taken in respect of the same during the year. It shall also record the action taken by him, or on his advice, during the year, in regard to offensive trades bakehouses and workshops.

- (15.) He shall give immediate information to the Local Government Board of any outbreak of dangerous epidemic disease within the district, and shall transmit to the Board, on forms to be provided by them, a quarterly return of the sickness and deaths within the district and also a copy of each annual and of any special report.
- (16.) In matters not specifically provided for in this order, he shall observe and execute, so far as the circumstances of the district may require, the instructions of the Local Government Board on the duties of medical officers of health, and all the lawful orders and directions of the sanitary authority applicable to his office.
- (17.) Whenever the Diseases Prevention Act of 1855 is in force within the district, he shall observe the directions and regulations issued under that Act by the Local Government Board, so far as the same relate to or concern his office.

Sec ss. 134-140 of the P. H. Act 1875, which now represent the Diseases Prevention Act of 1855.

- (18.) Where more than one medical officer of health shall be appointed by a sanitary authority, such authority, with the approval of the Local Government Board, may either assign to each of the officers a portion of the district, or may distribute the duties of medical officer of health among such officers.

#### SECTION V.—*Remuneration.*

Art. 1.—The sanitary authority or authorities, as the case may be, shall pay to any officer appointed under this order such salary or re-

muneration as may be approved by the Local Government Board ; and where such officer is appointed for two or more districts, the salary shall be apportioned amongst the districts, in such manner as the said Board shall approve.

Provided that the sanitary authority or authorities, with the approval of the Local Government Board, may pay to any such officer a reasonable compensation on account of extraordinary services, or other unforeseen circumstances connected with his duties or the necessities of the district or districts for which he is appointed.

Art. 2.—The salary or remuneration of every such officer shall be payable up to the day on which he ceases to hold the office, and no longer, subject to any deduction which the sanitary authority or authorities may be entitled to make in respect of sect. III. art. 3 ; and in case he shall die whilst holding such office, the proportion of salary (if any) remaining unpaid at his death shall be paid to his personal representatives.

Art. 3.—The salary or remuneration assigned to such officer shall be payable quarterly, according to the usual feast days in the year, namely, Lady Day Midsummer Day Michaelmas Day and Christmas Day ; but the sanitary authority or authorities may pay to him at the expiration of every calendar month such proportion as they may think fit on account of the salary or remuneration to which he may become entitled at the termination of the quarter.

Given under our seal of office, this eleventh day of  
November, in the year one thousand eight hundred  
and seventy-two.

JAMES STANSFELD,  
*President.*

JOHN LAMBERT,  
*Secretary.*



ORDERS AS TO INSPECTORS OF NUISANCES APPOINTED  
BY RURAL SANITARY AUTHORITIES, ANY PORTION  
OF WHOSE SALARY IS PAID OUT OF MONEYS VOTED BY  
PARLIAMENT.

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TO the Guardians of the Poor of the several Unions Parishes and Places in England and Wales, in which such Guardians act as a Rural Sanitary Authority under the Public Health Act 1872;—and to all others whom it may concern.

WHEREAS by section X. of “The Public Health Act 1872” it is enacted that it shall be the duty of every rural sanitary authority to appoint from time to time an inspector or inspectors of nuisances, for the purposes of the Sanitary Acts;

And whereas it is thereby further enacted that the Local Government Board shall have the same powers as they have in the case of a district medical officer of a Union, with regard to the qualification appointment duties salary and tenure of office of officers of sanitary authorities, any portion of whose salary is paid out of moneys voted by Parliament; and that the same person may, with the sanction of the Local Government Board, be appointed the inspector of nuisances for two or more sanitary districts, by the joint or several appointment of the sanitary authorities of such districts:

Now we, the Local Government Board, deeming it expedient that regulations should be made with respect to the appointment duties salary and tenure of office of inspectors of nuisances appointed by rural sanitary authorities, in all those cases where any portion of the salary of any such officer is paid out of moneys voted by Parliament, do hereby order and direct as follows:

See ss. 190-192 of the P. H. Act 1875.

SECTION I.—*Appointment.*

Art. 1.—A statement shall be submitted to the Local Government Board, showing the population and extent of the district for which the sanitary authority propose to appoint the inspector or inspectors of

nuisances, and the salary or remuneration intended to be assigned; and where the circumstances render desirable the appointment of one inspector of nuisances for two or more sanitary districts, statements shall, in like manner, be submitted to the Local Government Board, showing the names of the districts to be combined for that purpose, the population and extent of each district, the mode in which it is intended that the appointment shall be made, whether jointly or severally by the sanitary authorities of those districts, and the amount of salary or remuneration proposed to be assigned to the officer appointed.

Art. 2.—When the approval of the Local Government Board has been given to the proposals submitted to them, the sanitary authority or authorities shall proceed to the appointment of an inspector or inspectors of nuisances accordingly.

Art. 3.—No appointment of an inspector of nuisances shall be made under this order unless notice has been given at one of the two ordinary meetings next preceding the meeting or meetings at which the appointment is to be made by the sanitary authority or authorities, as the case may be, such notice being duly entered on the minutes, or unless an advertisement, giving notice of the day when such appointment will be made, shall have appeared in some public newspaper circulating in the district or districts, at least seven days before the day on which such appointment is made: Provided that no such notice or advertisement shall be necessary for the appointment of a temporary substitute.

Art. 4.—Every appointment hereafter made shall, within seven days after it is made, be reported to the Local Government Board by the clerk to the sanitary authority, or, in the case of a joint appointment, by the clerk to one of the sanitary authorities by whom the appointment is made.

Art. 5.—Upon the occurrence of a vacancy in such office, the sanitary authority or authorities shall proceed to make a fresh appointment, which shall be reported to the Local Government Board as required by sect. I. art. 4 of this order; but if the sanitary authority or authorities desire to make any fresh arrangement with respect to the district or the terms of the appointment, they shall, before filling up the vacancy, supply the particulars of the arrangement to the Local Government Board, in the manner prescribed by sect. I. art. 1, in regard to the first appointment, and if the approval of the Local Government Board be given, absolutely or with modifications, the sanitary authority or authorities shall then proceed to fill up the vacancy according to the terms of the approval so given.

Art. 6.—If any officer appointed under this order be at any time pre-

vented by sickness or accident, or other sufficient reason, from performing his duties, the sanitary authority or authorities, as the case may be, may appoint a fit person to act as his temporary substitute, and may pay him a reasonable compensation for his services: and every such appointment shall be reported to the Local Government Board as soon as the same shall have been made.

#### SECTION II.—*Tenure of Office.*

Art. 1.—Every officer appointed under this order shall continue to hold office for such period as the sanitary authority or authorities appointing him may, with the approval of the Local Government Board, determine, or until he die or resign or be removed by such authority or authorities with the assent of the Local Government Board, or by the Local Government Board: Provided that the appointments first made under this order shall not be for a period exceeding five years.

Art. 2.—Where any such officer shall be appointed for one or more sanitary districts, and any change in the extent of the district or districts or in the duties salary or remuneration, shall be deemed necessary, and he shall decline to acquiesce therein, the sanitary authority or authorities by whom he was so appointed, may, with the consent of the Local Government Board, but not otherwise, and after six months' notice in writing, signed by their clerk or clerks, given to such officer, determine his office.

Art. 3.—No person shall be appointed who does not agree to give one month's notice previous to resigning the office, or to forfeit such sum as may be agreed upon as liquidated damages.

#### SECTION III.—*Duties.*

The following shall be the duties of an inspector of nuisances in respect of the sanitary district for which he is appointed, or if he shall be appointed for more than one district, or for a part of a district, then in respect of each of such districts, or of such part:—

- (1.) He shall perform, either under the special directions of the sanitary authority or (so far as authorised by the sanitary authority under the directions of the medical officer of health, or in cases where no such directions are required, without such directions, all the duties specially imposed upon an inspector of nuisances by the Sanitary Acts, so far as the same are in force in the district or by the orders of the Local Government Board.
- (2.) He shall attend all meetings of the sanitary authority when so required.

- (3.) He shall by inspection of the district, both systematically at certain periods, and at intervals as occasion may require, keep himself informed in respect of the nuisances existing therein that require abatement under the Sanitary Acts.
- (4.) On receiving notice of the existence of any nuisance within the district, or of the breach of any byelaws or regulations made by the sanitary authority for the suppression of nuisances, he shall, as early as practicable, visit the spot, and inquire into such alleged nuisance or breach of byelaws or regulations.
- (5.) He shall report to the sanitary authority any noxious or offensive businesses trades or manufactories established within the district, and the breach or non-observance of any byelaws or regulations made in respect of the same.
- (6.) He shall report to the sanitary authority any damage done to any works of water supply, or other works belonging to them, and also any case of wilful or negligent waste of water supplied by them, or any fouling by gas, filth, or otherwise, of water used for domestic purposes.
- (7.) He shall from time to time, and forthwith upon complaint, visit and inspect the shops and places kept or used for the sale of butchers' meat poultry fish fruit vegetables corn bread or flour, or as a slaughter-house, and examine any animal carcase meat poultry game flesh fish fruit vegetables corn bread or flour which may be therein; and in case any such article appear to him to be intended for the food of man, and to be unfit for such food, he shall cause the same to be seized, and take such other proceedings as may be necessary in order to have the same dealt with by a justice: Provided, that in any case of doubt arising under this clause, he shall report the matter to the medical officer of health, with the view of obtaining his advice thereon.
- (8.) He shall, when and as directed by the sanitary authority, procure and submit samples of food or drink and drugs, suspected to be adulterated, to be analysed by the analyst appointed under the Adulteration of Food Act 1872, and upon receiving a certificate stating that the articles of food or drink or drugs are adulterated, cause a complaint to be made, and take the other proceedings prescribed by that Act.  
See now The Sale of Food and Drugs Act in App. II., *supra*.
- (9.) He shall give immediate notice to the medical officer of health of the occurrence within his district of any contagious infectious or epidemic disease of a dangerous character; and whenever it appears to him that the intervention of such officer is necessary



in consequence of the existence of any nuisance injurious to health, or of any overcrowding in a house, he shall forthwith inform the medical officer thereof.

- (10.) He shall, subject in all respects to the directions of the sanitary authority, attend to the instructions of the medical officer of health with respect to any measures which can be lawfully taken by him under the Sanitary Acts for preventing the spread of any contagious infectious or epidemic disease of a dangerous character.
- (11.) He shall enter from day to day, in a book to be provided by the sanitary authority, particulars of his inspections and of the action taken by him in the execution of his duties. He shall also keep a book or books, to be provided by the sanitary authority, so arranged as to form, as far as possible, a continuous record of the sanitary condition of each of the premises in respect of which any action has been taken under the Sanitary Acts, and shall keep any other systematic records that the sanitary authority may require.
- (12.) He shall at all reasonable times, when applied to by the medical officer of health, produce to him his books, or any of them, and render to him such information as he may be able to furnish with respect to any matter to which the duties of inspector of nuisances relate.
- (13.) He shall, if directed by the sanitary authority to do so, superintend and see to the due execution of all works which may be undertaken under their direction for the suppression or removal of nuisances within the district.
- (14.) In matters not specifically provided for in this order, he shall observe and execute all the lawful orders and directions of the sanitary authority, and the orders which the Local Government Board may hereafter issue, applicable to his office.
- (15.) Where more than one inspector of nuisances shall be appointed by a sanitary authority, such authority, with the approval of the Local Government Board, may either assign to each of the inspectors a portion of the district, or may distribute the duties of inspector of nuisances amongst such inspectors.

#### SECTION IV.—*Remuneration.*

Art. 1.—The sanitary authority or authorities, as the case may be, shall pay to any officer appointed under this order such salary or remuneration as may be approved by the Local Government Board; and where such officer is appointed for two or more districts, the salary shall

be apportioned amongst the districts in such manner as the said Board shall approve.

Provided that the sanitary authority or authorities, with the approval of the Local Government Board, may pay to any such officer a reasonable compensation on account of extraordinary services, or other unforeseen circumstances connected with his duties or the necessities of the district or districts for which he is appointed.

Art. 2.—The salary or remuneration of every such officer shall be payable up to the day on which he ceases to hold the office, and no longer, subject to any deduction which the sanitary authority or authorities may be entitled to make in respect of sect. II. art. 3; and in case he shall die whilst holding such office, the proportion of salary (if any) remaining unpaid at his death shall be paid to his personal representatives.

Art. 3.—The salary or remuneration assigned to such officer shall be payable quarterly, according to the usual feast days in the year, namely, Lady day Midsummer day Michaelmas day and Christmas day; but the sanitary authority or authorities may pay to him at the expiration of every calendar month such proportion as they may think fit, on account of the salary or remuneration to which he may become entitled at the termination of the quarter.

Given under our seal of office, this eleventh day of  
November, in the year one thousand eight hundred  
and seventy-two.

JAMES STANSFELD,  
*President.*

JOHN LAMBERT,  
*Secretary.*

## CHOLERA ORDER 1873.

TO all Urban, Rural, and Port Sanitary Authorities;—To all Officers of Customs;—To all Masters of Ships;—And to all others whom it may concern.

WHEREAS the Lords of Her Majesty's Most Honourable Privy Council, by an order bearing date the 29th day of July 1871, after reciting certain provisions of an Act passed in the sixth year of the reign of His Majesty King George the Fourth, chapter seventy-eight, and of the Sanitary Act 1866, and further that cholera was then prevailing in certain parts of continental Europe with which this country had communication, and that it was requisite to take precaution, as far as practicable, against the introduction of that disease into this country, did make certain rules orders and regulations in respect thereof, and by certain other orders bearing date respectively the 3rd and 5th days of August 1871, did make further regulations;

29 & 30  
Vict., c. 90.

And whereas under and by virtue of "The Local Government Board Act 1871," all powers and duties vested in and imposed on Her Majesty's Most Honourable Privy Council by (among others) the said Sanitary Act 1866, were, as regards England and Wales, transferred to and imposed on the Local Government Board;

34 & 35  
Vict., c. 70.

And whereas Cholera is now prevalent in certain parts of continental Europe with which this country has communication, and it is expedient that the said rules orders and regulations should be rescinded, and other rules orders and regulations substituted in their place:

Now therefore we, the Local Government Board, do hereby rescind all such rules orders and regulations in the above-recited orders contained, except in so far as they apply to Scotland, or may apply to any proceedings now pending, and we do hereby order as follows:—

*Definitions.*

Art. 1.—In this order:—

The term "Ship" includes vessel or boat;

The term "Officer of Customs" includes any person having authority from the Commissioners of Customs;

The term "Master" includes the officer or person for the time being in charge or command of a ship;

The term "Cholera" includes cholerae diarrhœa;

The term "Sanitary Authority" has the same meaning as in "The Public Health Act 1872";

The term "Clothing and Bedding" includes all clothing and bedding in actual use and worn or used by the person attacked, at the time of or during the attack of cholera.

For the purposes of this order, every ship shall be deemed infected with cholera, in which there is or has been during the voyage or during the stay of such ship in a foreign port in the course of such voyage, any case of cholera.

#### I.—*Regulations as to Customs Inspection.*

Art. 2.—If any officer of customs, on the arrival within the limits of any port in England of any ship, ascertains from the master of such ship or otherwise, or has reason to suspect, that the ship is infected with cholera, he may detain such ship, and order the master forthwith to moor or anchor the same; and thereupon the master shall forthwith moor or anchor the ship in such position as such officer of customs shall direct.

Art. 3.—Whilst such ship shall be so detained, no person shall leave the same.

Art. 4.—The officer of customs detaining any ship as aforesaid, shall forthwith give notice thereof, and of the cause of such detention, to the port sanitary authority, if there be one, or otherwise, to the sanitary authority of the district within which the ship shall be detained.

Art. 5.—Such detention by the officer of customs shall cease as soon as the said ship shall have been duly visited and examined by the proper officer of the sanitary authority; or, if the ship shall, upon such examination, be found to be infected with cholera, as soon as the same shall be anchored or moored in pursuance of art. 9 of this order.

Provided, that if the examination be not commenced within twelve hours after notice given as aforesaid, the ship shall, on the expiration of the said twelve hours, be released from detention. †

#### II.—*Regulations as to Sanitary Authorities.*

Art. 6.—The port or other sanitary authority at every port shall, as speedily as practicable, with the approval of the chief officer of customs of such port fix some place or places within the said port where any ship may be detained moored or anchored, for the purpose of these regulations.

Art. 7.—Any officer appointed by such sanitary authority to see to the carrying out of this order, if he have reason to believe that any ship arriving within the district of such authority, whether examined by the officer of customs or not, is infected with cholera, or shall have come from a place infected with cholera, may visit and examine such ship, for



the purpose of ascertaining whether it is so infected; and the master of such ship shall suffer the same to be so visited and examined.

Art. 8.—The sanitary authority, on notice being given to them by an officer of customs, under this order, shall forthwith cause the ship in regard to which such notice shall have been given, to be visited and examined by their medical officer of health, or some other legally qualified medical practitioner, for the purpose of ascertaining whether it is infected with cholera.

Art. 9.—The master of every ship which is infected with cholera shall, after any such examination as aforesaid, as long as the ship is within the district of a sanitary authority, moor or anchor her in such position as from time to time the said authority shall direct.

Art. 10.—No person shall leave any such ship until the examination hereinafter mentioned shall have been made.

Art. 11.—The sanitary authority shall, as soon as possible after the arrival of any such ship, cause all persons on board of the same to be examined by their medical officer of health, or some other legally qualified medical practitioner, and shall permit all persons who shall not be certified by him, as hereafter mentioned, to land immediately.

Art. 12.—Every person certified by the medical officer of health or medical practitioner making such examination, to be suffering from cholera, shall be dealt with under any rules that may have been made by the sanitary authority under the 29th section of the Sanitary Act, 1866, or, where no such rules shall have been made, shall be removed, if the condition of the patient admit of it, to some hospital or place previously appointed for such purpose by the said authority; and no person so removed shall leave such hospital or place until the medical officer of health of the authority, or some other legally qualified medical practitioner appointed by them, shall have certified that such person is free from the said disease.

If any person suffering from cholera cannot be removed, the ship shall remain subject, for the purposes of this order, to the control of the medical officer of health, or some other legally qualified medical practitioner appointed by the said authority; and the infected person shall not be removed from or leave the ship, except with the consent in writing of the medical officer of health or other medical practitioner.

See section 125 of the Public Health Act 1875.

Art. 13.—Such medical officer of health or medical practitioner shall give directions, and take such steps as may appear to him to be necessary, for preventing the spread of the infection, and the master of the said ship shall forthwith carry into execution such directions as shall be given to him by such officer or practitioner.

Art. 14.—Any person certified by such medical officer of health or medical practitioner as aforesaid to be suffering from any diarrhoeal or other illness which he may suspect to be cholera, may either be detained on board the ship or taken to some hospital or other previously appointed place, and detained there, for any period not exceeding two days, until it be ascertained whether the illness is or is not cholera.

Any such person who, while so detained, shall be certified by the medical officer of health or medical practitioner to be suffering from cholera, shall be dealt with as in the above article relating to patients suffering from that disease.

Art. 15.—In the event of any death from cholera taking place on board of such vessel while so detained, the master shall cause the dead body to be taken out to sea, and committed to the deep, properly loaded to prevent its rising.

Art. 16.—The master shall cause the clothing and bedding of every person who may have suffered from cholera on board such vessel, or who, having at any time been on board such vessel, shall have suffered from cholera during the stay of such vessel in a foreign port, to be disinfected or (if necessary) destroyed; and if the master shall have neglected to do so before the ship arrives in port, he shall forthwith, or upon the direction of the said authority, cause the same to be disinfected or destroyed, as the case may require; and if the said master neglect to comply with such direction within a reasonable time, the authority shall cause the same to be carried into execution.

Art. 17.—The master shall cause every part of the ship, and every article therein, other than those last described, which may probably be infected with cholera, to be disinfected or destroyed, when required to do so by the said authority or by their medical officer of health.

Given under our seal of office, this seventeenth day of  
July in the year one thousand eight hundred and  
seventy-three.

JAMES STANSFELD,  
*President.*

JOHN LAMBERT,  
*Secretary.*

NOTICE.—The statute 35 & 36 Vict. c. 79, provides in section 52 that “any person wilfully neglecting, or refusing to obey or carry out, or obstructing the execution of any rule order or regulation made by the Local Government Board under section 52 of the Sanitary Act 1866, shall be guilty of an offence punishable on summary conviction before two justices, and be liable to a penalty not exceeding *Fifty Pounds.*”

See section 130 of the Public Health Act 1875.

REMUNERATION FOR TAXATION OF COSTS.

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TO the clerks of the peace of the several counties ridings divisions and places in England and Wales ;—To the several urban and rural sanitary authorities in England and Wales constituted by “ *The Public Health Act 1872* ;”—and to all others whom it may concern.

See section 249 of the Public Health Act 1875.

WHEREAS it was enacted by the “ *Public Health Act 1872*,” that on the application of any sanitary authority whose accounts are required by the Sanitary Acts to be audited to the clerk of the peace of the county in which the area under the jurisdiction of such authority is wholly or in part situated, his deputy should tax any bill due to any solicitor or attorney in respect of legal business performed on behalf of such authority ; and that the allowance of any sum on such taxation should be *primâ facie* evidence of the reasonableness of the amount, but not of the legality of the charge ; and that the clerk of the peace should be allowed for such taxation a remuneration after the rate to be fixed by the master of the crown office, and declared by an order of the Local Government Board.

And whereas the master of the crown office has fixed the rate of allowance to the clerk of the peace in respect of such taxation as herein declared :

Now therefore we, the Local Government Board, in pursuance of the statute aforesaid, hereby declare, that the clerk of the peace of every county or place in England and Wales shall be allowed for the taxation of every bill due to any solicitor or attorney, in respect of legal business performed on behalf of any urban or rural sanitary authority, after the rate of fourpence per sheet or folio of seventy-two words each.

Given under our seal of office, this twenty-ninth day of November, in the year one thousand eight hundred and seventy-two.

JAMES STANSFELD,  
*President.*

JOHN T. HIBBERT,  
*Secretary.*

INSTRUCTIONS IN RELATION TO BYELAWS.

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BYELAWS and regulations which require the confirmation of the Local Government Board should, before they are finally approved of by the local authority, be submitted to the Board *in writing*, and not in print, upon foolscap paper, with a margin of one-third on each folio. The draft thus forwarded for the perusal and observations of the Board, should be written on one side only, and signed by the clerk to the authority.

The notice of intention to apply for confirmation should be postponed till after the draft has been examined by the Board, and the copy of proposed byelaws for the inspection of the rate-payers, should not be deposited at the office of the authority until the draft has been so examined and returned by the Board.

When the draft has been thus examined and returned, and the byelaws have been published as required by the statute applicable thereto, they should, together with the draft so returned, be forwarded, sealed, and where necessary signed, to the Local Government Board for confirmation. The Board should at the same time be furnished with a copy of the newspaper containing the advertisement of the intention of the authority to apply for confirmation of the byelaws.

Local Government Board,  
Whitehall, S.W.  
Nov. 21, 1873.

JOHN LAMBERT,  
*Secretary.*



OPINION AS TO DEFINITION OF "COMMON LODGING HOUSE.

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THE following opinions of the law officers of the Crown, as to the definition of the expression "common lodging house," under the Common Lodging Houses Act of 1851, were given in the year 1853.

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[FIRST OPINION.]

It may be difficult to give a precise definition of the term "common lodging house;" but looking to the preamble and general divisions of the Act, it appears to us to have reference to that class of lodging houses in which persons of the poorer class are received for short periods, and though strangers to one another are allowed to inhabit one common room. We are of opinion that it does not include hotels inns public houses or lodgings let to the upper and middle classes.

(Signed)

A. E. COCKBURN,  
W. P. WOOD.

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[SECOND OPINION.]

The points upon which our opinion is desired, appear to us to be the following:—

1st. What is the meaning of that part of the definition of a common lodging house, in our former opinion, which refers to the parties inhabiting a common room, being "strangers to one another?"—The observation made would imply that we meant that the parties must be persons previously unacquainted with one another. Our obvious intention was to distinguish lodgers promiscuously brought together from members of one family or household.

2nd. Whether lodging houses, otherwise coming within the definition,

but let for a week or longer period, would, from the latter circumstance, be excluded from the operation of the Act?

We are of opinion that the period of letting is unimportant in determining whether a lodging house comes under the Act now in question.

3rd. Who is to be considered the keeper of a common lodging house where the owner, letting the lodgings, does not himself reside in the house?

We are of opinion that where he neither resides in the house nor exercises any control over its management, but simply receives the rent, he cannot be considered the keeper. It is clear that in such case he would not comply with the requirements of the 11th 12th and 13th sections of the Act. But where the owner, though not resident in the house, either in person or through an agent, colourably or otherwise exercises control over its management, we have no doubt that he should be considered the keeper. A serious difficulty arises where the owner *bonâ fide* lets different parts of the house to different individuals, and these lessees take in lodgers of such a description as would in an ordinary case constitute the house a common lodging house. The question which here arises is—Whether each apartment so used is to be considered a common lodging house, of which the lessee is the keeper?

It seems to us difficult to suppose that the Act which refers to common lodging houses was intended to apply to single apartments, so that every room in a house might become a separate common lodging house. On the other hand it is to be observed, that it is by the 2nd section provided that part of a house, “if used as a common lodging house,” shall be included in the Act; and it is also true that both under the law relating to burglary, and also with reference to the exercise of franchises, the separate apartments of lodgers, where the landlord did not reside, have been held to be dwelling-houses.

Considering therefore that apartments thus let and occupied are especially within the mischief intended to be remedied by the Act, we think that an attempt should be made to treat them as common lodging houses, and to enforce the provisions of the Act with respect to them against the tenants who thus admit lodgers.

At the same time we feel bound to say we entertain considerable doubts as to the result.

(Signed)

A. E. COCKBURN,  
W. P. WOOD.

APPENDIX IV.

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CHRONOLOGICAL TABLE OF "THE  
SANITARY ACTS."





## CHRONOLOGICAL TABLE OF "THE SANITARY ACTS." <sup>a</sup>

The Acts of which the titles are printed in italics are repealed by the Public Health Act 1875, and their provisions are consolidated by that Act.

Date of Act.	Title or Short Title of Act.	Observations.
1846. 9 & 10 Vict. c. 74.	An Act to encourage the Establishment of Public Baths and Wash-houses.	These Acts are adoptive. Where before the passing of the Public Health Act 1875 they were in force within the district of any urban sanitary authority, such authority is by section 10 of that Act to execute them; where they were not so in force, such authority may adopt them. See the Acts printed in Appendix II.
1847. 10 & 11 Vict. c. 61.	An Act to amend the Act for the Establishment of Public Baths and Wash-houses.	
1848. 11 & 12 Vict. c. 63.	<i>The Public Health Act 1848.</i>	The Local Government Act 1858, and the Local Government Act (1858) Amendment Act 1861, and the Local Government Amendment Act 1863, form together with this Act the group of Acts known as the Local Government Acts.
1851. 14 & 15 Vict. c. 28.	<i>The Common Lodging Houses Act 1851.</i>	As to the definition of "Common Lodging House," see the opinion of the law officers of the Crown at the end of Appendix III.
14 & 15 Viet. c. 34.	'The Labouring Classes' Lodging Houses Act 1851.	See observation on 9 & 10 Vict. c. 74, <i>supra</i> . This Act empowers the urban sanitary authority to provide and maintain suitable dwellings for the labouring classes.
1853. 16 & 17 Vict. c. 41.	<i>The Common Lodging Houses Act 1853.</i>	

<sup>a</sup> As defined in section 60 of the Public Health Act 1872, with the addition of the Sanitary Law Amendment Act 1874 (37 and 38 Viet., c. 89).

Date of Act.	Title or Short Title of Act.	Observations.
1855. 18 & 19 Vict. c. 116.	<i>The Diseases Prevention Act 1855.</i>	
18 & 19 Vict. c. 121.	<i>The Nuisances Removal Act for England 1855.</i>	This Act, and 23 & 24 Vict. c. 77, and the Nuisances Removal Act for England (Amendment) Act 1863 and the Nuisances Removal Act (No. 1) 1866, and the Sanitary Act 1866 (Part II.), form the group of Acts known as the Nuisances Removal Acts.
1858. 21 & 22 Vict. c. 98.	<i>The Local Government Act 1858.</i>	See observation on the Public Health Act 1848.
1860. 23 & 24 Vict. c. 77.	<i>An Act to amend the Acts for the Removal of Nuisances and the Prevention of Diseases.</i>	
1861. 24 & 25 Vict. c. 61.	<i>The Local Government Act (1858) Amendment Act 1861.</i>	
1863. 26 Vict. c. 17.	<i>The Local Government Act Amendment Act 1863.</i>	
26 & 27 Vict. c. 40.	<i>The Bakehouse Regulation Act 1863.</i>	See this Act in Appendix II.
26 & 27 Vict. c. 117.	<i>The Nuisances Removal Act for England (Amendment) Act 1863.</i>	
1865. 28 & 29 Vict. c. 75.	<i>The Sewage Utilization Act 1865.</i>	This Act, and the Sanitary Act 1866 (Part I.), and the Sewage Utilization Act 1867, and the Sanitary Act 1868, and the Sanitary Loans Act 1869, and the Sanitary Act 1870, form the group of Acts known as the Sewage Utilization Acts.
1866. 29 & 30 Vict. c. 28.	<i>The Labouring Classes' Dwelling Houses Act 1866.</i>	Amends the Labouring Classes' Lodging Houses Act 1851.
29 & 30 Vict. c. 41.	<i>The Nuisances Removal (No. 1) Act 1866.</i>	
29 & 30 Vict. c. 90.	<i>The Sanitary Act 1866.</i>	
1867. 30 & 31 Vict. c. 28.	<i>The Labouring Classes' Dwelling Houses Act 1867.</i>	Amends the Labouring Classes' Lodging Houses Act 1851.

Date of Act.	Title or Short Title of Act.	Observations.
30 & 31 Vict. c. 113.	<i>The Sewage Utilization Act 1867.</i>	This was the first Act which gave large powers and facilities for disposal of sewage by application to land, etc.
1868. 31 & 32 Vict. c. 115.	<i>The Sanitary Act 1868.</i>	By this Act the provisions of the Public Health Act 1848 for enforcing privy accommodation and for scavenging were extended to rural districts.
31 & 32 Vict. c. 130.	<i>The Artizans' and Labourers' Dwellings Act 1868.</i>	Enables the local authority to enforce the taking down or the repair and improvement of premises unfit for human habitation. See this Act in Appendix II.
1869. 32 & 33 Vict. c. 100.	<i>The Sanitary Loans Act 1869.</i>	
1870. 33 & 34 Vict. c. 53.	<i>The Sanitary Act 1870.</i>	
1872. 35 & 36 Vict. c. 79.	<i>The Public Health Act 1872.</i>	
1874. 37 & 38 Vict. c. 89.	<i>The Sanitary Law Amendment Act 1874.</i>	





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NOTE.—In this Index the sections referred to are those of the Public Health Act 1875, unless otherwise specified; the letters *M.*, *T.I.*, *T.P.*, and *W.* refer respectively to the Markets and Fairs Clauses Act, the Towns Improvement Clauses Act, the Towns Police Clauses Act, and the Waterworks Clauses Acts.

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THE  
RIVERS POLLUTION PREVENTION  
ACT, 1876;

WITH  
EXPLANATORY INTRODUCTION, NOTES,  
TABLE OF CASES, ETC.,

*AND A FULL INDEX.*

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## INTRODUCTORY NOTE.

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THIS Edition of the "Rivers Pollution Prevention Act, 1876," is printed uniformly with the Author's Edition of the "Public Health Act, 1875," and is intended to be bound up with it.

For the short Digest of Cases relating to the pollution, &c., of streams, which will be found at p. 37, *seqq.*, as well as for the preparation of the Index, I am indebted to Mr. Arthur J. Mackey, of Lincoln's Inn.

G. A. R. FITZGERALD.

3, STONE BUILDINGS, LINCOLN'S INN,  
November, 1876.



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## EXPLANATION

OF THE

## RIVERS POLLUTION PREVENTION ACT, 1876.

## PRELIMINARY.

IN the year 1865 a Royal Commission was issued, appointing Mr. Rawlinson, C.E., Mr. Thornhill Harrison, and Mr. J. T. Way, Commissioners to inquire into the subject of river pollution in England.

Royal  
Commis-  
sions of  
1865 and  
1868.

That Commission was revoked in 1868, and a new Commission was issued, by which General Sir W. T. Denison, K.C.B., Dr. Edward Frankland, and Mr. John Chalmers Morton, were directed to inquire “how far the present use of rivers or running waters in England for the purpose of carrying off the sewage of towns and populous places, and the refuse arising from industrial processes and manufactures, can be prevented without risk to the public health or serious injury to such processes and manufactures, and how far such sewage and refuse can be utilized and got rid of otherwise than by discharge into rivers or running waters, or rendered harmless before reaching them;” and also to inquire into the effect of obstructions to the natural flow of rivers (such as mills and locks) on land drainage, &c., and the best means of remedying any evils thence arising.

This Commission was subsequently extended to Scotland, and the generality of its terms was fully recognised in the instructions issued by the Home Office to the Commissioners.

The work of inquiry was taken up by the second body of Commissioners where the first Commissioners had left off, and practically the two Commissions may be regarded as one. In addition to a great mass of oral evidence, many valuable communications

Inquiries  
of Com-  
mission of  
1868.

were received from town clerks, medical officers of health, manufacturers, landowners, and others; and six reports have been made by the Commissioners.

The fact, long since obvious to the senses, that many rivers which thirty or forty years ago were clear, have now become intolerably foul, is in these reports confirmed and illustrated with scientific precision and detail, with the result of the passing of the Act which forms the subject of these pages.

Three  
sources of  
river  
pollution.

There are three main sources of river pollution, in other words, three main sources from which liquid or liquid and solid matters are discharged into streams, of such a character as, either singly or in combination, to affect the quality of the water in every imaginable degree from mere discolouration to absolute poisoning. They are as follows:—

I. Sewers and drains.

II. Manufactories.

III. Mines.

It may be convenient, also, for the present purpose, to include under the term river pollution the interference with the natural flow of rivers caused by sending into them solid manufacturing refuse, cinders, and other solid matters, although these solids do not deteriorate the quality of the water.

Throughout their reports the Commissioners recognised the feasibility of keeping solid refuse and other solid matters out of rivers, and advocated legislation which should prohibit altogether pollution of this description.

With regard to other pollutions, the Commissioners, in their fifth report, made in 1874, stated that in every case where river pollution is due to the presence of matters of animal or vegetable origin—that is to say, in the case of sewage and almost all manufacturing pollution—efficient remedies exist and are practicable. At the same time they pointed out how mineral pollutions, though more difficult to deal with, may be treated by subsidence.

It would appear, therefore, that there is in the nature of things no insuperable obstacle to the improvement of the state of our rivers, though such improvement may be slow, and in some instances costly.

State of  
existing  
law as to  
river  
pollution.

At common law, any person causing a public nuisance by defiling a stream or impeding its navigation, may be indicted or restrained by injunction. He is also liable to an action for

damages at the suit of any party injured by his acts. The principle of the law is therefore quite sufficient for the protection of rivers from pollution, but its processes are so tedious and expensive that they are in practice available only to the rich and powerful. There is also great difficulty in establishing the liability of any individual for a nuisance.<sup>a</sup>

As regards statute law, the casting of garbage, dung, and other ordure into rivers near towns was prohibited as long ago as 1388,<sup>b</sup> and particular rivers have been protected by special Acts from the time of Henry VIII. down to such Acts as the Thames Conservancy and Navigation Acts, the Lee Conservancy Act, 1868, and the Nottingham and Leen District Sewerage Act, 1872; moreover, the Gasworks and Waterworks Clauses Acts, and the Public Health Acts, contain provisions restricting the discharge of gas washings and sewage into rivers;<sup>c</sup> but no general modern statute has been passed with a view to insure the cleanliness of rivers. Pollution of every description has increased, unchecked by any successful attempt at legislation, till the state of things is universally admitted to have reached the stage when something must be done.

The difficulties of the subject, in a legislative point of view, can scarcely be exaggerated. On the one side is the injury to health and property caused by acts which turn clear streams into stinking sewers, or which raise the beds of streams so as to impede navigation and flood the adjacent lands; on the other side, manufacturers and mine-owners urge the impolicy as well as the hardship of practically stopping many branches of industry and throwing thousands of hands out of employment, in order that cattle may be able to drink and fish to live in the water used for the purposes of manufactories and mines.

Difficulties of legislation.

The position of local authorities is in many instances one of peculiar hardship. Compelled, on the general introduction of the sewer system, to drain their towns, and then stopped by injunctions from sending the contents of their sewers into rivers, they find themselves "in a cleft stick." "In the matter of sewage 'nuisances,'" writes the Town Clerk of Bradford, "the Court refuses to inquire into the difficulties in which the town is placed,

<sup>a</sup> See the short digest of cases relating to the pollution, &c., of streams, *infra*, p. 37 *seqq.*

<sup>b</sup> 12 Ric. 2, c. 13.

<sup>c</sup> See these provisions, *infra*, p. 33.

“ the necessities of manufacturers, the effect of interfering with  
 “ trade, or even whether the complainant is a nuisance-maker  
 “ himself. Substantially, it permits only one issue. Are the Board  
 “ causing a nuisance to the property of the complainant? If so,  
 “ although the Board is executing an Act of Parliament, although  
 “ its plans have been sanctioned by Government . . . . the Court  
 “ will grant injunction . . . . Nor is this all . . . . The Court  
 “ can restrain, but it will not be bound to any proposed remedy.  
 “ Readiness and willingness are nothing; actual outlay nothing.”<sup>a</sup>

It is not therefore wonderful that legislation has been delayed; rather, it is matter of congratulation that it has been found possible to pass a measure so soon after the conclusion of the labours of the Commissioners.

Bill of  
1875.

The Commissioners, in their report of 1874, presented a series of conclusions and recommendations, and in the session of 1875 a Bill dealing with the prevention of river pollution was conducted through the House of Lords by Lord Salisbury, but came down to the House of Commons too late to be passed.

Act of  
1876.

A Bill on the same subject was introduced in the House of Commons in the following session by Mr. Sclater-Booth, the President of the Local Government Board, which, after the insertion of certain amendments, chiefly at the instance of the representatives of manufacturing and mining interests, has become law under the title of the Rivers Pollution Prevention Act, 1876.

The scheme of this Act and its provisions are explained below, and in the notes to the various sections of the Act itself.

#### EXPLANATION OF RIVERS POLLUTION PREVENTION ACT, 1876.

Scheme of  
Act of  
1876.

The scheme of this Act is, speaking generally, to prohibit altogether the putting of solid matters into streams; to prohibit the establishment of new sources of sewage and manufacturing pollutions; to render compulsory the adoption of the best practicable and available means for rendering harmless polluting matters in the case of sewage and manufacturing pollutions existing at the date of the passing of the Act, and in the case of mining pollutions; and to provide a cheap and ready County Court process for enforcing the provisions of the Act.

<sup>a</sup> Third Report of the Rivers Pollution Commissioners, p. 294.



It is to be observed, therefore, that the Act is essentially one of procedure. In most cases where proceedings can be taken under the Act, the law already affords a remedy, though an expensive and dilatory one.

At the same time it is to be observed that, subject to a proviso to be hereafter noticed,<sup>a</sup> the provisions of the Act are cumulative, and do not in any way supersede or interfere with any remedy at present given by law.

The Act is divided into six parts, the first three of which lay down the law; the fourth relates to administration of the law by local authorities, and to legal proceedings; and the fifth and sixth to the application of the Act to Scotland and Ireland respectively.

Part I. is headed Law as to Solid Matters, but does not contain the *whole* of the law as to solid matters, since the law as to solid sewage matter and as to solid mining refuse is separately dealt with in Parts II. and III. respectively. It consists of a single section, and declares that putting or causing to be put or to fall, or knowingly permitting to be put or to fall, or to be carried into any stream, so as either singly or in combination with other similar acts of the same or any other person, to interfere with its due flow or to pollute its waters, the solid refuse of any manufactory, manufacturing process or quarry, or any rubbish or cinders, or any other waste or any putrid solid matter, shall be deemed to constitute an offence against the Act.

Part I.—  
Solid  
Matters.

Evidence may be given of repeated acts which together cause the interference or pollution, though each act, taken by itself, may not be sufficient for the purpose.

Following the precedent of the Lee Conservancy Act, 1868, it is declared by section seventeen that the provisions of the Act do not extend to the lawful exercise of any right of impounding or diverting water, *e.g.*, by building a dam or otherwise.

Attention must here be called also to the provision in section twenty, that “solid matter” shall not include particles of matter in suspension in water.

The mode in which offences against the Act are to be dealt with is pointed out in Part IV. of the Act, which provides for their being restrained by a summary order in the nature of an injunction made by the County Court having jurisdiction in the place in

<sup>a</sup> See note to s. 16.

which the offence is committed, and enables the Court to impose a penalty not exceeding £50 a day for every day of default in complying with the order of the Court.<sup>a</sup>

Part II.—  
Sewage  
Pollu-  
tions.

Part II. deals with Sewage Pollutions, and also consists of one section. It enacts, in language similar to that of the preceding section, that “every person who causes to fall or flow or knowingly permits to fall or flow or to be carried into any stream any solid or liquid sewage matter, shall be deemed to have committed an offence against the Act;” subject, however, to the following qualification in favour of what may be termed existing pollutions; that is to say, cases of admission of sewage into a stream by a channel used, constructed, or in process of construction at the date of the passing of the Act.

In these cases the section goes on to enact that the admission of sewage into the stream shall not be deemed to be an offence against the Act, if the person causing or permitting its admission shews to the satisfaction of the Court having cognisance of the case that he is using the best practicable and available means to render harmless the sewage matter so admitted into the stream.

The establishment of new sources of river pollution by sewage is therefore absolutely prohibited, and all sanitary authorities and other persons having the control of sources already existing must adopt the best practicable and available means to purify their sewage before it is discharged into any stream.

The expression “best practicable and available means” must, it would seem, be construed with reference to the state of chemical and other knowledge for the time being, and with reference to the locality and circumstances of the particular case.

The word “available” is not found in section 5 of the Salmon Fishery Act, 1861 (24 & 25 Vict. c. 109), which makes putting poisonous matter into salmon rivers an offence, with the proviso that a penalty shall not be incurred by any person who proves that he has used “the best practicable means within a reasonable cost” to render harmless the poisonous matter. The addition of this word appears to have the force already pointed out.

A further provision in favour of sanitary authorities is made by the concluding portion of the section, to the effect that, in the case of sewage discharged into a stream by a channel used, constructed, or in process of construction at the passing of the Act, the Local

<sup>a</sup> See *post*, p. 11.

Government Board may, if they are satisfied that further time ought to be granted to the sanitary authority for the purpose of enabling such authority to adopt the best practicable and available means for rendering harmless their sewage matter, by order declare that the section shall not, so far as regards the discharge of sewage matter by such channel, be in operation until the expiration of a period to be limited in the order.

An order made under this section may be from time to time renewed by the Local Government Board, subject to such conditions as they may see fit.

Some provision of this sort may be regarded as essential to any legislation on the subject; considering the magnitude of the interests involved, particularly in the large manufacturing towns of the North, and that the problem of the best method of disposing of sewage remains as yet unsolved.

It might have been considered that the general language of this section would apply to a person sending his house drainage into a stream along the sewers of a sanitary authority. The concluding paragraph of this section, therefore, expressly provides that a person shall not be guilty of an offence in respect of the passing of sewage matter into a stream along a drain communicating with any sewer belonging to or under the control of any sanitary authority, if he has the sanction of the sanitary authority for using their sewers.

Part III. contains the law as to manufacturing and mining pollutions, and, though framed on the same principles, differs materially in its provisions from Parts I. and II.

Part III.—  
Manufacturing and  
Mining  
Pollutions.

The establishment of new sources of manufacturing pollution is prohibited, just as the establishment of new sources of sewage pollution is prohibited; and the adoption of the best practicable and available means is required in the case of existing pollutions.

There is, however, an important extension of the cases in which the use of the best practicable and available means will be a good plea to proceedings under the Act, which is noticed in the note to section four.

Section five deals with mining pollutions, and absolutely prohibits the introduction of solid matter from any mine into a stream in such quantities as to prejudicially interfere with its due flow; but the provisions contained in section two, enabling evidence to be given of repeated acts, are not found in this section.

The Court might, however, it is conceived, receive such evidence even without any such express provision.

With respect to polluting matters, whether solid or liquid, a distinction is made between mines and manufactories, and it will be sufficient, even in the case of *new* mining pollutions, to shew that the best practicable and available means have been adopted. The ground for this distinction is, that while manufactories are artificial establishments, minerals are the natural products of the soil, and it is a much stronger measure to interfere with a man's working his own property than to interfere with new manufactories built with full knowledge of the provisions of the Act.

It is, however, in the restrictions placed by section six on proceedings under the Act against manufactories and mines that the chief difference between Part III. and the preceding parts of the Act resides. This section declares that, unless and until Parliament otherwise provides, proceedings shall not be taken against any person under this part of this Act save by a sanitary authority; and that such proceedings shall not be taken without the consent of the Local Government Board. Moreover, the Board in giving or withholding their consent are directed to have regard to the industrial interests involved in the case, and to the circumstances and requirements of the locality.

Again, the Board are not to give their consent to proceedings by the sanitary authority of any district which is the seat of any manufacturing industry, unless they are satisfied, after due inquiry, that means for rendering harmless the poisonous, noxious, or polluting liquids proceeding from the processes of such manufactures are reasonably practicable and available under all the circumstances of the case, and that no material injury will be inflicted by such proceedings on the interests of such industry.

Notwithstanding the consent of the Local Government Board to the institution of proceedings, any person within any such last-mentioned district against whom any proceedings are proposed to be taken, will be at liberty to object before the sanitary authority to the institution of proceedings, and may require to be heard by himself, agents, and witnesses. If he so requires to be heard, the sanitary authority are to determine after inquiry, having regard to all the considerations to which the Local Government Board are by this section directed to have regard, whether proceedings are to be taken or not. And where any such sanitary authority



has taken proceedings it will not be competent to other sanitary authorities to take proceedings under this Act till the party against whom such proceedings are intended has failed in reasonable time to carry out the order of any competent court under this Act.<sup>a</sup>

Part IV. contains two subdivisions. The first relates to the administration of the law by local authorities, the second to legal proceedings. Under the first heading, it is made *primâ facie* the duty of every sanitary or other local authority having sewers under their control to give facilities for enabling manufacturers within their district to carry the liquids proceeding from their factories or manufacturing processes into such sewers. But on this obligation limits are necessarily imposed. In the first place, no sanitary authority will be obliged by this section to admit into their sewers any liquid which would prejudicially affect such sewers, or the disposal by sale, application to land, or otherwise, of the sewage matter conveyed along such sewers, or which would be injurious in a sanitary point of view. Secondly, no sanitary authority can be required to give the above-mentioned facilities where their sewers are only sufficient for the requirements of their own district, nor where such facilities would interfere with any injunction or other order of a court of law respecting the sewage of such authority.

Part IV.—  
Adminis-  
tration of  
Law.

The Bill, as introduced, contained provisions for determining disputes as to compensation, &c., under this section by arbitration, but these provisions were struck out during the passage of the Bill through the House of Commons.

The next section empowers sanitary authorities to enforce the provisions of the Act in relation to any stream within or passing by their district, by taking proceedings in respect of any offence against the Act which causes interference with the due flow within their district, or the pollution within their district, of any such stream. It is immaterial whether the offence is committed within or without their district. A precedent for enabling sanitary authorities to proceed against offences which affect their district, though not committed within it, is found in sections 108 and 115 of the Public Health Act, 1875, which enable local authorities to proceed against nuisances within their district caused by an act or default outside their district.

Any expenses incurred by a sanitary authority in the execution

<sup>a</sup> See note to this section, which is somewhat difficult of construction.

of the Act will be payable as if they were expenses incurred in the execution of the Public Health Act, 1875.

It will be recollected that the sanction of the Local Government Board is required to proceedings under Part III. of the Act against manufactories and mines. Considering the stringent obligations that sanitary authorities are under with regard to sewage, there would seem to be good reason why they should be active in enforcing the law against manufactories and mines, save for the old difficulty, that members of sanitary authorities are in many cases the chief offenders.

Any person aggrieved may also take proceedings under the Act, except in respect of offences against the provisions of Part III.

Section nine applies only to the Conservancy Board for the river Lee, constituted under the Lee Conservancy Act, 1868, and requires no explanation.

Before quitting the subject of administration of the law by local authorities, and without entering on the vexed controversy of the best mode of administration, it may be observed that the Bill, as introduced, contained clauses for the permissive establishment of conservancy authorities for the whole or part of the catchment areas of rivers and their affluents. These authorities would have been constituted by provisional order of the Local Government Board out of representatives of sanitary authorities, and invested with powers of enforcing the Act, and of levying rates; also, in some, if not in all cases, with powers of executing works for dredging, cleaning, and removing obstructions in streams within their jurisdiction. The clauses, however, were dropped on the second reading of the Bill.

Legal proceedings.

It has been already mentioned that the mode of procedure against offences under the Act is by application to the County Court for a summary order in the nature of an injunction, instead of laying an information for penalties before a magistrate under the Summary Jurisdiction Acts.

Section ten empowers the County Court having jurisdiction in the place where any offence against the Act is committed by summary order to require the offender to abstain from the commission of such offence. Where the offence consists in default to perform a duty under the Act, the Court may require him to perform such duty in such manner as may be specified in the order; moreover, the Court may insert in any order such conditions as to time or

mode of action as it may think just, and may suspend or rescind any order on such undertaking being given or condition being performed as it may think just, and generally may give such directions for carrying into effect any order as it thinks fit. Previous to granting such order, the Court may, if it think fit, remit to skilled parties to report on the "best practicable and available means" and the nature and cost of the works and apparatus required, who shall in all cases take into consideration the reasonableness of the expense involved in their report.

Any person making default in complying with any requirement of an order of the Court incurs a liability to pay such sum, not exceeding £50 a day for every day of his default, as the Court may order; moreover, if he persists in his default for a month or such other period less than a month as may be prescribed by the order, the Court may, in addition to any penalty it may impose, appoint persons to carry into effect such order, and all expenses incurred by such persons to such amount as may be allowed by the Court will be deemed to be a debt due to them from the person in default, and may be recovered in the County Court.

An appeal, by way of special case, is given from the decision of the County Court to the High Court of Justice, as in the Alkali Act (26 & 27 Vict. c. 124, s. 14).

Moreover, any plaint entered in a County Court under the Act may be removed into the High Court of Justice by leave of a judge of the said High Court, if it appears to him desirable in the interests of justice that the case should be tried in the first instance in the High Court of Justice. But a plaint can only be so removed on such terms as to security for and payment of costs, and such other terms (if any) as such judge may think fit (s. 11).

A better proof of the efficiency of the County Courts, and of the respect for their decisions, could scarcely be given than the universal acceptance of their selection as the tribunal under this Act.

Two important sections relating to legal proceedings remain to be noticed.

It has long since been pointed out that in any legislation dealing with river pollution it would be desirable to provide some sort of official assistance to the Court before whom cases are brought in dealing with the scientific aspect of the case. Now, evidence of pollution or non-pollution will in nearly all proceed-



ings under the Act be a mere question of evidence of the senses. Not so with the question of whether the means employed for rendering harmless polluting matters are in a given case the best practicable and available. Accordingly, section twelve provides that a certificate granted by an inspector appointed for the purposes of the Act by the Local Government Board to the effect that the means used in a given case are the best or only practicable and available means under the circumstances of that particular case, shall in all courts and in all proceedings under the Act be conclusive evidence of the fact.

Such a certificate will be obtained by application to the Local Government Board, and will continue in force for a period not exceeding two years.

All expenses incurred in obtaining a certificate will have to be paid by the applicant.

Any person who considers himself aggrieved either by the grant or the withholding of a certificate may appeal to the Local Government Board against the decision of the inspector, and the Board may either confirm, reverse, or modify his decision, and may make such order as to the party or parties by whom the costs of the appeal are to be borne as to the said Board may appear just.

If this section is acted on to the extent that appears probable, it will not only save the courts and parties a host of expert testimony, but will, in many cases, prevent proceedings being taken at all. The certificate, of course, only applies to cases where the use of the best practicable and available means is a good plea, *i.e.*, to sewage and liquid manufacturing pollutions existing at the time of the passing of the Act and any mining pollutions.

Section thirteen provides that proceedings shall not be taken for any offence against Parts II. and III. of the Act, until the expiration of twelve months after the passing of the Act; and that proceedings shall not in any case be taken for any offence against the Act until the expiration of two months after written notice of the intention to take such proceedings has been given to the offender. Moreover, proceedings are not to be taken under the Act while other proceedings in relation to the same offence are pending.

The two following sections relate to inquiries held by the Local Government Board for the purposes of the Act.



Section fourteen enables the Board to make orders as to the costs incurred by them in relation to inquiries instituted by them under this Act, and as to the parties by whom such costs shall be borne.

Section fifteen confers on inspectors of the Board, for the purposes of any inquiry under the Act, similar powers in relation to witnesses and their examination, the production of papers and accounts, and the inspection of places and matters required to be inspected, to those which the inspectors of the Board have under the Public Health Act, 1875, for the purposes of that Act.

The first of the sections found under the heading Saving Saving clauses. Clauses, is a general saving for all existing legal remedies against the acts and defaults which are made offences by the Act, and it is expressly provided that such other rights or powers may be exercised in the same manner as if the Act had not passed; and that nothing in the Act shall legalise any act or default, which would, but for this Act, be deemed to be a nuisance, or otherwise contrary to law. The proviso to this section is noticed in the note to the section.

Section seventeen declares that the Act shall not apply to or affect the lawful exercise of any rights of impounding or diverting water, so that the provision as to solid matters will not interfere with (for example) the lawful erection of a dam or weir.

The following section saves the Acts relating to the Thames and Lee, and the rights of the Metropolitan Board of Works, and calls for no particular observation.

Where any sanitary or other local authority has been empowered or required by any Act of Parliament to carry sewage into the sea or tidal waters, nothing done under such Act by such authority will be deemed an offence against the Act (s. 19).

The most important of the definitions in section twenty is the definition of stream, which, in effect, lays down the limits within which the Act applies. It will be observed that all fresh waters are included, and the sea and tidal waters to such extent as may, after local inquiry and on sanitary grounds, be prescribed by the Local Government Board.

Parts V. and VI. make the necessary modifications of the Act Parts V.  
and VI. in its application to Scotland and Ireland.



THE  
RIVERS POLLUTION PREVENTION ACT, 1876.

(39 & 40 VICT. c. 75.)

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# THE RIVERS POLLUTION PREVENTION ACT, 1876.

39 & 40 VICT. c. 75.

*An Act for making further Provision for the Prevention of the Pollution of Rivers.*

[15th August, 1876.]

**W**HEREAS it is expedient to make further provision for the prevention of the pollution of rivers, and in particular to prevent the establishment of new sources of pollution :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

I. This Act may be cited for all purposes as the Rivers Pollution Prevention Act, 1876.

Short title  
of Act.

## PART I.

### LAW AS TO SOLID MATTERS.

II. Every person who puts or causes to be put or to fall or knowingly permits to be put or to fall or to be carried into any stream, so as either singly or in combination with other similar acts of the same or any other person to interfere with its due flow, or to pollute its waters, the solid refuse of any manufactory, manufacturing process or quarry, or any rubbish or cinders, or any other waste or any putrid solid matter, shall be deemed to have committed an offence against this Act.

Prohibition as to putting solid matters into streams.

In proving interference with the due flow of any stream, or in proving the pollution of any stream, evidence may be given of repeated acts which together cause such interference or pollution, although each act taken by itself may not be sufficient for that purpose.

The law as to solid sewage matter is contained in section 3, and as to solid mining refuse in section 5.

The words "knowingly permits to be carried" meet the case of persons who place solid matter on land in such a position that it will be washed into a stream by floods. See the definition of "person" and "stream," in section 20.

"Polluting" does not include innocuous discoloration: section 20.

The second paragraph of the section shows clearly that an offence may be constituted (so to speak) of repeated acts of the same character; and as an act which in combination with other similar acts of other persons causes interference with or pollution of a stream is an offence, it would seem that the repeated acts mentioned in this paragraph need not be those of the same person.

The mode of proceeding against offences is laid down in section 10: see also section 8 as to the power of sanitary authorities to enforce the Act.

Two months' notice must be given to the offender before proceedings can be taken (section 13); but, subject to this provision, proceedings may now be taken under this enactment.

## PART II.

### LAW AS TO SEWAGE POLLUTIONS.

Prohibition as to drainage into streams of sewers

III. Every person who causes to fall or flow or knowingly permits to fall or flow or to be carried into any stream any solid or liquid sewage matter, shall (subject as in this Act mentioned) be deemed to have committed an offence against this Act.

Where any sewage matter falls or flows or is carried into any stream along a channel used, constructed, or in process of construction at the date of the passing of this Act for the purpose of conveying such sewage matter, the person causing or knowingly permitting the sewage matter so to fall or flow or to be carried shall not be deemed to have committed an offence against this Act if he shows to the satisfaction of the court having cognisance of the case that he is using the best practicable and available means to render harmless the sewage matter so falling or flowing or carried into the stream.

Where the Local Government Board are satisfied after local inquiry that further time ought to be granted to any sanitary authority, which at the date of the passing of this Act is discharging sewage matter into any stream, or permitting it to be so discharged, by any such channel as aforesaid, for the purpose of enabling such authority to adopt the best practicable and available means for rendering harmless such sewage matter, the Local Government Board may by order declare that this section shall not, so far as regards the discharge of sewage matter by such

channel be in operation until the expiration of a period to be limited in the order.

Any order made under this section may be from time to time renewed by the Local Government Board, subject to such conditions, if any, as they may see fit.

A person other than a sanitary authority shall not be guilty of an offence under this section in respect of the passing of sewage matter into a stream along a drain communicating with any sewer belonging to or under the control of any sanitary authority, provided he has the sanction of the sanitary authority for so doing.

"Subject as in this Act mentioned" *i.e.* (1) to the proviso in paragraph two that persons discharging sewage into streams by channels used, constructed, or in process of construction at the passing of the Act, shall not be deemed to commit an offence if they use the best practicable and available means to render harmless such sewage matter: (2) to the proviso in paragraph three, that in certain cases the Local Government Board may suspend the operation of the section in favour of sanitary authorities: and (3) to the proviso in paragraph five, that a person whose house drainage reaches a stream by passing along a drain communicating with a sewer of a sanitary authority, shall not on that account be deemed guilty of an offence against the Act.

The prohibition then of future sewage pollution is absolute, and though the second paragraph allows the use of the best practicable and available means to be pleaded in the case of existing pollutions against proceedings *under the Act*, it does not legalize any nuisance, or interfere with any local or other Act, or with any decision of any Court.

The burden of proof as to the adoption of the best practicable and available means will be on the defendant. Section 12 must be here referred to, which operates in favour of the defendant by making the certificate of the inspector therein mentioned conclusive evidence in all proceedings under the Act, that the means adopted are the best or only practicable and available means under the circumstances of the particular case.

"To render harmless" *i.e.* with reference to pollution. What constitutes pollution of a stream is a question of fact in each particular case; mere discoloration, however, is expressly declared, by section 20, not to constitute pollution. In most cases the ordinary evidence of the senses as to the fact will probably be sufficient, without any resort to scientific testimony.

An application under paragraph three to the Local Government Board should fully set forth all the facts of the case, and should pray that an order may be made in the terms of the section.

As to inquiries by the Board, see sections 14 and 15.

As to definition of "person" and "stream," see section 20.

The Act does not contain any definition of sewage, nor is any such definition given by the Public Health Act, 1875. It would seem that the effluent water from sewage properly treated could not be considered as liquid sewage matter within the meaning of this section.

As to proceedings against offences, see section 10.

It should be noticed that proceedings under this enactment cannot be taken for twelve months after the passing of the Act, nor then until two months' notice has been given to the offender. See section 13.

See the provisions of the Public Health Act, 1875, cited *infra*, p. 36, and the cases as to sewage pollution in the short digest of cases, *infra*, p. 37 *seqq.*

## PART III.

## LAW AS TO MANUFACTURING AND MINING POLLUTIONS.

Prohibition as to drainage into streams from manufactories.

IV. Every person who causes to fall or flow or knowingly permits to fall or flow or to be carried into any stream any poisonous, noxious, or polluting liquid proceeding from any factory or manufacturing process shall (subject as in this Act mentioned) be deemed to have committed an offence against this Act.

Where any such poisonous, noxious, or polluting liquid as aforesaid falls or flows or is carried into any stream along a channel used, constructed, or in process of construction at the date of the passing of this Act, *or any new channel constructed in substitution thereof, and having its outfall at the same spot, for the purpose of conveying such liquid*, the person causing or knowingly permitting the poisonous, noxious, or polluting liquid so to fall or flow or to be carried shall not be deemed to have committed an offence against this Act if he shows to the satisfaction of the court having cognisance of the case that he is using the best practicable and reasonably available means to render harmless the poisonous, noxious, or polluting liquid so falling or flowing or carried into the stream.

"Subject as in this Act mentioned," *i.e.* to substantially the same proviso in favour of pollution from existing manufactories as is contained in section 3, in favour of existing sewage pollutions. A further concession, however, is made in this section by the introduction of the words in italics, which, as well as the word "reasonably" before "available," were inserted during the passage of the Bill through Parliament. See note to section 3.

As to the restrictions on proceedings, see sections 6 and 13.

Prohibition as to drainage into stream from mines.

V. Every person who causes to fall or flow or knowingly permits to fall or flow or to be carried into any stream any solid matter from any mine in such quantities as to prejudicially interfere with its due flow, or any poisonous, noxious, or polluting solid or liquid matter proceeding from any mine, other than water in the same condition as that in which it has been drained or raised from such mine, shall be deemed to have committed an offence against this Act, unless in the case of poisonous, noxious, or polluting matter he shows to the satisfaction of the court having cognisance of the case that he is using the best practicable and reasonably available means to render harmless the poisonous, noxious, or polluting matter so falling or flowing or carried into the stream.



See p. 7, *supra*.

This section deals with mining pollutions, and differs from the preceding section in that no such distinction is made between mines opened before and mines opened after the passing of the Act, as is made between existing manufactories and new manufactories.

In the case of all mines alike, the introduction into a stream of any solid matter in such quantities as to prejudicially interfere with its due flow is absolutely prohibited; and the introduction of poisonous, noxious, or polluting solid or liquid matter will be an offence, unless the best practicable and reasonably available means are employed to render such matter harmless.

Water in the same condition as that in which it has been pumped from the mine is, however, excepted from the operation of the section, and may be sent into any stream in that condition.

See notes to sections 3 and 4.

As to the restrictions on proceedings, see sections 6 and 13.

VI. Unless and until Parliament otherwise provides the following enactments shall take effect, proceedings shall not be taken against any person under this part of this Act save by a sanitary authority, nor shall any such proceedings be taken without the consent of the Local Government Board: Provided always, that if the sanitary authority, on the application of any person interested alleging an offence to have been committed, shall refuse to take proceedings or apply for the consent by this section provided, the person so interested may apply to the Local Government Board, and if that Board on inquiry is of opinion that the sanitary authority should take proceedings, they may direct the sanitary authority accordingly, who shall thereupon commence proceedings.

Restriction on proceedings under this part of the Act.

The said Board in giving or withholding their consent shall have regard to the industrial interests involved in the case and to the circumstances and requirements of the locality.

The said Board shall not give their consent to proceedings by the sanitary authority of any district which is the seat of any manufacturing industry, unless they are satisfied, after due inquiry, that means for rendering harmless the poisonous, noxious, or polluting liquids proceeding from the processes of such manufactures are reasonably practicable and available under all the circumstances of the case, and that no material injury will be inflicted by such proceedings on the interests of such industry.

Any person within such district as aforesaid, against whom proceedings are proposed to be taken under this part of this Act, shall, notwithstanding any consent of the Local Government Board, be at liberty to object before the sanitary authority to such proceedings being taken, and such authority shall, if required in writing by such person, afford him an opportunity of being heard against such proceedings being taken, so far as the same relate to

his works or manufacturing processes. The sanitary authority shall thereupon allow such person to be heard by himself, agents, and witnesses, and after inquiry such authority shall determine, having regard to all the considerations to which the Local Government Board are by this section directed to have regard, whether such proceedings as aforesaid shall or shall not be taken; and where any such sanitary authority has taken proceedings under this Act, it shall not be competent to other sanitary authorities to take proceedings under this Act till the party against whom such proceedings are intended shall have failed in reasonable time to carry out the order of any competent court under this Act.

This section was considerably altered during the passage of the Bill through Parliament, and places most important restrictions on proceedings against manufacturing and mining pollutions.

In the first place, proceedings can only be taken by a sanitary authority, and with the consent of the Local Government Board.

Secondly, the Board in considering whether they will give their consent to proceedings are bound (1) in all cases to have regard to the industrial interests involved in the case and to the circumstances and requirements of the locality: (2) in the case of proposed proceedings by the sanitary authority of a district which is the seat of any manufacturing industry, to satisfy themselves by due inquiry that means for rendering harmless the liquids proceeding from the manufacture in question are reasonably practicable and available under the circumstances, and that no material injury will be inflicted by such proceedings on the interests of such industry.

Thirdly, even after the consent of the Local Government Board to proceedings has been given, the person against whom they are proposed to be taken can claim to be heard before the sanitary authority, who in finally deciding whether to take the proceedings or not, are enjoined to have regard to all the considerations to which the Local Government Board are above directed to have regard.

Fourthly, a person against whom proceedings have been taken by a sanitary authority is protected against proceedings by any other sanitary authorities until he has failed in reasonable time to carry out any order of the Court made under the Act.

Thus far the section is clear; and if it should seem that proceedings against manufacturing and mining pollutions are unduly hampered, the magnitude of the interests involved, and the necessarily tentative character of legislation on all similar subjects must be remembered.

A difficulty is created by the introduction in paragraph one of the proviso, to the effect that where a sanitary authority on the application of any person interested has refused to take proceedings or to apply for the consent of the Local Government Board, the Board may, on the application of such person, direct the sanitary authority to take proceedings, "who shall thereupon commence proceedings."

This proviso is apparently in conflict with the provision in the last paragraph of the section, that in certain cases an alleged offender may claim to be heard before the sanitary authority even after the consent of the Local Government Board has been given. Probably, however, it may be considered that where, in accordance with the proviso, the Board have once directed a sanitary authority to take proceedings, the sanitary authority must comply with such direction without further hearing the alleged offender.

As to the powers of the Board in relation to inquiries, see sections 14 and 15.

As to the notice to be given before proceedings can be taken, see section 13.

## PART IV.

### ADMINISTRATION OF LAW.

VII. Every sanitary or other local authority having sewers under their control shall give facilities for enabling manufacturers within their district to carry the liquids proceeding from their factories or manufacturing processes into such sewers :

Sanitary authority to afford facilities for factories draining into sewers.

Provided that this section shall not extend to compel any sanitary or other local authority to admit into their sewers any liquid which would prejudicially affect such sewers, or the disposal by sale, application to land, or otherwise, of the sewage matter conveyed along such sewers, or which would from its temperature or otherwise be injurious in a sanitary point of view :

Provided also, that no sanitary authority shall be required to give such facilities as aforesaid where the sewers of such authority are only sufficient for the requirements of their district, nor where such facilities would interfere with any order of any court of competent jurisdiction respecting the sewage of such authority.

See p. 9, *supra*.

“Or other local authority.” This expression covers sewerage boards.

The obligation imposed on sanitary authorities by section 15 of the Public Health Act, 1875, is to provide such sewers as may be necessary for effectually draining their district for the purposes of the Act. The removal of manufacturing refuse is not one of the purposes of the Public Health Act, hence it would seem that sanitary authorities are not bound or even empowered to provide sewers with this object. Nor is any such power given by this section, which only requires them to give facilities for the admission of manufacturing refuse into their sewers when such sewers are in existence, and are larger than are needed for the requirements of the district.

For definition of sanitary authority, see section 20.

VIII. Every sanitary authority shall, subject to the restrictions in this Act contained, have power to enforce the provisions of this Act in relation to any stream being within or passing through or by any part of their district, and for that purpose to institute proceedings in respect of any offence against this Act which causes interference with the due flow within their district of any such stream, or the pollution within their district of any such stream, against any other sanitary authority or person, whether such offence is committed within or without the district of the first-named sanitary authority.

Power of sanitary authority to enforce Act.

Any expenses incurred by a sanitary authority in the execution of this Act shall be payable as if they were expenses properly incurred by that authority in the execution of the Public Health Act, 1875.



Proceedings may also, subject to the restrictions in this Act contained, be instituted in respect of any offence against this Act by any person aggrieved by the commission of such offence.

See p. 9, *supra*.

"Subject to the restrictions in this Act contained," *i.e.* to the restrictions on proceedings against manufacturing and mining pollutions imposed by section 6, and to the restrictions imposed by section 13 on proceedings generally.

It will be observed that if a stream within or passing through or by any part of the district of a sanitary authority is obstructed or polluted, the sanitary authority may proceed, though the offence causing the obstruction or pollution is committed without their district.

As to the expenses of sanitary authorities, see sections 207, &c., and 229, &c., of the Public Health Act, 1875.

The term "sanitary authority" includes the nuisance authority in the metropolis: see section 20. But the Public Health Act, 1875, does not apply to the metropolis. No provision seems to be made, therefore, for the expenses of the metropolitan nuisance authorities under the Act.

For definition of "stream," see section 20.

Power of  
Lee Con-  
servancy  
Board to  
enforce  
Act.

IX. The Conservancy Board constituted under the Lee Conservancy Act, 1868, shall, within the area of their jurisdiction, have, to the exclusion of any other authority, the powers for enforcing the provisions of this Act which sanitary authorities have under this Act.

The said Conservancy Board may also enforce the provisions of the Lee Conservancy Act, 1868, under the head or division "Protection of Water," by application to the county court having jurisdiction in the place in which any offence is committed against those provisions, and such court may by summary order require any person to abstain from the commission of any such offence, and the provisions of this Act with respect to summary orders of county courts and appeal therefrom shall apply accordingly.

The second paragraph of this section applies the county court procedure of this Act to offences against the specified provisions of the Lee Conservancy Act, 1868, but does not prevent the Conservancy Board from proceeding under their own Act without reference to this section.

It will be observed that in the case of the river Lee the riparian sanitary authorities cannot take proceedings under this Act, as this power is given to the Conservancy Board "to the exclusion of any other authority." Apparently, however, an aggrieved person can take such proceedings: see section 8.

## LEGAL PROCEEDINGS. SAVING CLAUSES. DEFINITIONS.

### (1.) *Legal Proceedings.*

Offences to  
be re-  
strained  
by sum-  
mary order  
of county  
court.

X. The county court having jurisdiction in the place where any offence against this Act is committed may by summary order require any person to abstain from the commission of such offence, and where such offence consists in default to perform a duty under



this Act may require him to perform such duty in manner in the said order specified ; the court may insert in any order such conditions as to time or mode of action as it may think just, and may suspend or rescind any order on such undertaking being given or condition being performed as it may think just, and generally may give such directions for carrying into effect any order as to the court seems meet. Previous to granting such order the court may, if it think fit, remit to skilled parties to report on the “best practicable and available means,” and the nature and cost of the works and apparatus required, who shall in all cases take into consideration the reasonableness of the expense involved in their report.

Any person making default in complying with any requirement of an order of a county court made in pursuance of this section shall pay to the person complaining, or such other person as the court may direct, such sum, not exceeding fifty pounds a day for every day during which he is in default, as the court may order ; and such penalty shall be enforced in the same manner as any debt adjudged to be due by the court ; moreover, if any person so in default persists in disobeying any requirement of any such order for a period of not less than a month or such other period less than a month as may be prescribed by such order, the court may in addition to any penalty it may impose appoint any person or persons to carry into effect such order, and all expenses incurred by any such person or persons to such amount as may be allowed by the county court shall be deemed to be a debt due from the person in default to the person or persons executing such order, and may be recovered accordingly in the county court.

This section enables an order in the nature of an injunction to be obtained from the county court having jurisdiction in the place in which any offence against the Act is committed. The court is also invested with large powers of directing the execution of works, and with an absolute discretion as to the conditions on which the order may be granted.

It would seem that unless an agreement is come to between the parties with respect to the remuneration of the skilled persons who may, under this section, be employed to report on the best practicable means, that the provision enabling that court to employ them will be nugatory ; as the court has no power to order any remuneration.

If, however, a certificate has been obtained under section 12, this will be conclusive.

XI. If either party in any proceedings before the county court under this Act feels aggrieved by the decision of the court in point of law or on the merits, or in respect of the admission or rejection

Appeal  
from  
county  
court, and  
removal of

case into  
High  
Court of  
Justice.

of any evidence, he may appeal from that decision to the High Court of Justice.

The appeal shall be in the form of a special case to be agreed upon by both parties or their attorneys, and if they cannot agree, to be settled by the judge of the county court upon the application of the parties or their attorneys.

The court of appeal may draw any inferences from the facts stated in the case that a jury might draw from facts stated by witnesses.

Subject to the provisions of this section, all the enactments, rules, and orders relating to proceedings in actions in county courts, and to enforcing judgments in county courts and appeals from decisions of the county court judges, and to the conditions of such appeals, and to the power of the superior courts on such appeals, shall apply to all proceedings under this Act, and to an appeal from such action, in the same manner as if such action and appeal related to a matter within the ordinary jurisdiction of the court.

Any plaint entered in a county court under this Act may be removed into the High Court of Justice by leave of any judge of the said High Court, if it appears to such judge desirable in the interests of justice that such case should be tried in the first instance in the High Court of Justice and not in a county court, and on such terms as to security for and payment of costs, and such other terms (if any) as such judge may think fit.

The provisions as to appeal contained in this section are substantially the same as those of the Alkali Act, 1863 (26 & 27 Vict. c. 124).

Certificate  
of in-  
specter of  
Local Govern-  
ment  
Board as to  
best prac-  
ticable  
means.

XII. A certificate granted by an inspector of proper qualifications appointed for the purposes of this Act by the Local Government Board to the effect that the means used for rendering harmless any sewage matter or poisonous, noxious, or polluting solid or liquid matter falling or flowing or carried into any stream, are the best or only practicable and available means under the circumstances of the particular case, shall in all courts and in all proceedings under this Act be conclusive evidence of the fact; such certificate shall continue in force for a period to be named therein, not exceeding two years, and at the expiration of that period may be renewed for the like or any less period.

All expenses incurred in or about obtaining a certificate under this section shall be paid by the applicant for the same.

Any person aggrieved by the grant or the withholding of a certificate under this section may appeal to the Local Government Board against the decision of the inspector; and the Board may either confirm, reverse, or modify his decision, and may make such order as to the party or parties by whom the costs of the appeal are to be borne as to the said Board may appear just.

Any such order may be made a rule of Court. See section 14.

See sections 3, 4, and 5 as to the cases in which it is only necessary to shew that the best practicable and available means to prevent pollution are used.

See p. 11.

XIII. Proceedings shall not be taken under this Act against any person for any offence against the provisions of Parts II. and III. of this Act until the expiration of twelve months after the passing of this Act; nor shall proceedings in any case be taken under this Act for any offence against this Act until the expiration of two months after written notice of the intention to take such proceedings has been given to the offender, nor shall proceedings under this Act be taken for any offence against this Act while other proceedings in relation to such offence are pending.

Restriction on proceedings for offences.

See also section 6 as to the restrictions on proceedings under Part III. of the Act.

XIV. The Local Government Board may make orders as to the costs incurred by them in relation to inquiries instituted by them under this Act, and as to the parties by whom such costs shall be borne; and every such order and every order for the payment of costs made by the said Board under section twelve of this Act may be made a rule of Her Majesty's High Court of Justice.

Orders as to costs of inquiries.

This enactment follows the analogous provision in section 294 of the Public Health Act, 1875.

XV. Inspectors of the Local Government Board shall, for the purposes of any inquiry directed by the Board under this Act, have in relation to witnesses and their examination, the production of papers and accounts, and the inspection of places and matters required to be inspected, similar powers to those which the inspectors of the said Board have under the Public Health Act, 1875, for the purposes of that Act.

Power of inspectors of Local Government Board.

See section 296 of the Public Health Act, 1875, which gives the inspectors the powers which poor-law inspectors have under the Acts relating to the relief of the poor. See 4 & 5 Will. 4, c. 76.



(2.) *Saving Clauses.*

Powers of  
Act cumu-  
lative.

XVI. The powers given by this Act shall not be deemed to pre-judice or affect any other rights or powers now existing or vested in any person or persons by Act of Parliament, law, or custom, and such other rights or powers may be exercised in the same manner as if this Act had not passed; and nothing in this Act shall legalise any act or default which would but for this Act be deemed to be a nuisance or otherwise contrary to law: Provided nevertheless, that in any proceedings for enforcing against any person such rights or powers the court before which such proceedings are pending shall take into consideration any certificate granted to such person under this Act.

By this section it is expressly declared that the powers given by the Act for restraining the obstruction or pollution of streams are cumulative, and that other rights or powers may be exercised as if the Act had not passed; subject to this qualification, that in proceedings to enforce such other rights or powers, the Court shall take into consideration any certificate granted under section 12 of the Act.

It is difficult to see how this qualification will work, since it is no defence to (for example) an indictment for nuisance to allege that the best or only practicable and available means have been adopted to render harmless the matter which causes the nuisance. Apparently it will not apply to proceedings under the Acts mentioned in section 18. The proviso was inserted during the passage of the Bill through Parliament.

For illustrations of the ordinary legal remedies against the pollution, &c., of streams, see the short digest of cases *infra*, p. 37, *seqq.*

Saving of  
rights of  
impound-  
ing and  
diverting  
water.

XVII. This Act shall not apply to or affect the lawful exercise of any rights of impounding or diverting water.

Without a saving clause of this description, the lawful construction of a dam or weir would fall within the prohibition contained in section 2.

Saving of  
certain  
Conser-  
vancy  
Acts.

XVIII. Nothing in or done under this Act shall extend to interfere with, take away, abridge, or prejudicially affect any right, power, authority, jurisdiction, or privilege given by the Thames Conservancy Acts, 1857 and 1864, or by the Thames Navigation Act, 1866, or by the Lee Conservancy Act, 1868, or any Act or Acts extending or amending the said Acts or either of them, or affect any outfall or other works of the Metropolitan Board of Works (although beyond the Metropolis) executed under the Metropolis Management Act, 1855, and the Acts amending or extending the same, or take away, abridge, or prejudicially affect any right, power, authority, jurisdiction, or privilege of the Metropolitan Board of Works.

If the Courts are to have regard to a certificate granted under section 12 in proceedings under the Acts here mentioned, it would appear that the powers conferred by these Acts would be prejudicially affected. It would seem, therefore, that the proviso to section 16 does not apply here.



XIX. Where any local authority or any urban or rural sanitary authority has been empowered or required by any Act of Parliament to carry any sewage into the sea or any tidal waters, nothing done by such authority in pursuance of such enactment, shall be deemed to be an offence against this Act.

Saving of works of certain local authorities.

In some instances works have been constructed under Parliamentary powers at great cost for conveying town sewage into the sea or tidal waters. It would obviously be a great hardship by the operation of this Act to render such works useless. Hence the introduction of this section.

### (3.) Definitions.

XX. In this Act, if not inconsistent with the context, the following terms have the meanings hereinafter respectively assigned to them; that is to say,

Definitions.

“Person” includes any body of persons, whether corporate or unincorporate:

“Stream” includes the sea to such extent, and tidal waters to such point, as may, after local inquiry and on sanitary grounds, be determined by the Local Government Board, by order published in the *London Gazette*. Save as aforesaid, it includes rivers, streams, canals, lakes, and watercourses, other than watercourses at the passing of this Act mainly used as sewers, and emptying directly into the sea, or tidal waters which have not been determined to be streams within the meaning of this Act by such order as aforesaid:

“Solid matter” shall not include particles of matter in suspension in water:

“Polluting” shall not include innocuous discoloration:

“Sanitary authority” means—

In the metropolis as defined by the Metropolis Management Act, 1855, any local authority acting in the execution of the Nuisances Removal for England Act, 1855, and the Acts amending the same;

18 & 19 Viet. c. 121.  
23 & 24 Viet. c. 77.

Elsewhere in England, any urban or rural sanitary authority acting in the execution of the Public Health Act, 1875.

38 & 39 Viet. c. 55.

It will be observed that tidal waters only come under the operation of the Act to such extent as may be determined by order of the Local Government Board made after local inquiry.

Watercourses which have at the date of the passing of the Act virtually become sewers, and which empty *directly* into the sea, are altogether excepted from the operation of the Act.

It is of course difficult to assign a precise meaning to the expression "innocuous discoloration." It would seem at all events to cover all discoloration by matter which does not render the water unfit for drinking, domestic, or manufacturing purposes.

## PART V.

### APPLICATION OF THE ACT TO SCOTLAND.

Modifica-  
tions of  
Act in  
Scotland

XXI. In the application of this Act to Scotland the following provisions shall have effect:

- (1.) The expression "sanitary authority" shall mean and include the local authority in any parish or burgh in Scotland, acting under the Public Health (Scotland) Act, 1867:
- (2.) The expression "*London Gazette*" shall mean *Edinburgh Gazette*:
- (3.) The expression "the Public Health Act, 1875," shall mean the Public Health (Scotland) Act, 1867, and any Acts amending the same:
- (4.) This Act shall be read and construed as if for the expression "the Local Government Board" wherever it occurs therein, the expression "the Secretary of State" were substituted; and the expression "the Secretary of State" shall mean one of Her Majesty's principal Secretaries of State:
- (5.) The expression "the county court" shall mean the sheriff of the county, and shall include sheriff substitute; and the expression "plaint entered in a county court" shall mean petition or complaint presented in a sheriff court:
- (6.) The expression "the High Court of Justice" shall mean the Court of Session in either division of the Inner House thereof:
- (7.) All the jurisdiction, powers, and authorities necessary for the purposes of this Act are hereby conferred on sheriffs and their substitutes:
- (8.) The Court of Session may, on the application of the Lord Advocate, on behalf of the Secretary of State, interpose their authority to any order made by the Secretary of State as to the costs incurred by him in relation to in-

quiries instituted by him under this Act, and as to the parties by whom such costs shall be borne; and may grant decree conform thereto, upon which execution and diligence may proceed in common form :

- (9.) An inspector appointed for the purposes of this Act by the Secretary of State shall, for the purposes of any inquiry directed by the Secretary of State under this Act, be entitled, by a summons signed by him, to require the attendance of all persons he may think fit to call before him in regard to the matters of the inquiry, and to administer oaths to, and examine upon oath, all such persons, and to require and enforce the production upon oath of all documents, accounts, or papers in anywise relating to such inquiry; and shall also have, in relation to the inspection of places and matters required to be inspected, similar powers to those which sanitary inspectors have under the Public Health (Scotland) Act, 1867.

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## PART VI.

XXII. In the application of this Act to Ireland the following provisions shall have effect :

Applica-  
tion of this  
Act to  
Ireland

- (1.) The expression "sanitary authority" shall mean any urban or rural sanitary authority acting in the execution of "The Public Health (Ireland) Act, 1874" :
- (2.) The expression "The Public Health Act, 1875," shall mean "The Public Health (Ireland) Act, 1874" :
- (3.) The expression "the Local Government Board" shall mean the Local Government Board for Ireland :
- (4.) The expression "the county court" shall mean the civil bill court :
- (5.) The expression "plaint entered in a county court" shall mean civil bill process :
- (6.) The expression "the High Court of Justice" shall mean any of the Superior Courts of Common Law in Dublin, or any judge thereof to whom appeals may be brought from the decision of a civil bill court :
- (7.) The expression "the judge of the county court" shall

mean the chairman of quarter sessions and judge of the civil bill court:

- (8.) The expression "the *London Gazette*" shall mean the *Dublin Gazette*:
- (9.) All the jurisdiction, powers, and authorities necessary for the purposes of this Act are hereby conferred upon the civil bill courts and superior courts, and the judges of the same respectively:
- (10.) All penalties, when recovered by or on behalf, or at the instance of or in any proceeding instituted by any sanitary authority, or any officer of such authority, shall be paid to such sanitary authority, and by the same applied in aid of their expenses under the Sanitary Acts; and save as aforesaid all such penalties shall be applied in manner directed by "The Fines Act (Ireland), 1851," and any Act amending the same.



## OTHER STATUTORY PROVISIONS RELATING TO THE PROTECTION OF STREAMS FROM POLLUTION, &c.

10 & 11 VICT. c. 15 (*Gasworks Clauses Act*, 1847).

S. 21. "If the undertakers shall at any time cause or suffer to be brought or to flow into any stream, reservoir or aqueduct, pond or place for water, or into any drain communicating therewith, any washing or other substance produced in making or supplying gas, or shall wilfully do any act connected with the making or supplying of gas whereby the water in any such stream, reservoir, aqueduct, pond or place shall be fouled, the undertakers shall forfeit for every such offence the sum of £200."

S. 23 renders the undertakers liable to a further penalty of £20 a day for each day during which the nuisance shall be continued after the expiration of 24 hours from the time when notice of the offence shall have been served on the undertakers by the person into whose water such washing or other substance shall be brought or shall flow, or whose water shall be fouled thereby."

S. 29. "Nothing in this or the special Act contained shall prevent the undertakers from being liable to an indictment for nuisance, or to any other legal proceeding to which they may be liable, in consequence of making or supplying gas."

These provisions only apply where there is a special Act in force which incorporates them. They are not incorporated with the Public Health Act, 1875.

10 & 11 VICT. c. 17 (*Waterworks Clauses Act*, 1847).

S. 61. "Every person who shall commit any of the offences next hereinafter enumerated shall for every such offence forfeit to the undertakers a sum not exceeding £5 (that is to say)—

\* \* \* \* \*

"Every person who shall throw any rubbish, dirt, filth or other

“noisome thing into any such stream”, &c., or wash or cleanse therein  
 “any cloth, wool, leather, or skin of any animal, or any clothes or  
 “other thing:

“Every person who shall cause the water of any sink, sewer or  
 “drain, steam engine, boiler, or other filthy water belonging to him  
 “or under his control to run or be brought into any stream, &c.,  
 “belonging to the undertakers, or shall do any other act whereby the  
 “water of the undertakers shall be fouled:

“And every such person shall forfeit a further sum of 20 shillings  
 “for each day (if more than one) that such last mentioned offence  
 “shall continue.”

S. 62. “Every person making or supplying gas within the limits of  
 “the special Act who shall” foul any water belonging to the under-  
 takers (the offence being described in the same terms as in section 21 of  
 the Gasworks Clauses Act, 1847, *supra*) “shall forfeit to the undertakers  
 “for every such offence the sum of £200.”

S. 63 imposes a further penalty of £20 a day during each day that  
 the offence shall be continued after notice.

S. 64. “Whenever the water supplied by the undertakers shall be  
 “fouled by the gas of any person making or supplying gas within the  
 “limits of the special Act, such person shall forfeit to the undertakers  
 “for every such offence a sum not exceeding £20, and a further sum  
 “not exceeding £10 for each day during which the offence shall con-  
 “tinue after the expiration of 24 hours from the service of notice of  
 “such offence.”

These provisions apply where they are incorporated by any special Act; and  
 also to water belonging to any sanitary authority. See section 57 of the Public  
 Health Act, 1875 (38 & 39 Vict. c. 55).

It may be added that the Gasworks Clauses Act (s. 49) and the  
 Waterworks Clauses Act (s. 93) provide that nothing in those Acts  
 respectively or in the special Act contained, shall exempt the under-  
 takers from the provisions of any general Act relating to gasworks  
 or waterworks, or any Act for improving the sanitary condition of  
 towns and populous places, which may be passed in the same session  
 as the special Act, or in any future session of Parliament.

\* That is, “any stream, reservoir, aqueduct, or other waterworks belonging to the  
 undertakers.”

10 & 11 VICT. c. 34 (*Towns Improvement Clauses Act, 1847*).

S. 24. The Commissioners may cause the sewers vested in them “to communicate with and empty themselves into the sea or any public river, or they may cause the refuse from such sewers to be conveyed by a proper channel to the most convenient site for its collection and sale for agricultural or other purposes, as may be deemed most expedient, but so that the same shall in no case become a nuisance.”

“S. 107. “Nothing in this Act contained shall be construed to render lawful any act or omission on the part of any person which is, or but for this Act would be, deemed to be a nuisance at Common Law, nor to exempt any person guilty of nuisance at Common Law from prosecution or action in respect thereof, according to the forms of proceeding at Common Law, nor from the consequences of being convicted thereof.”

These sections only apply where they are incorporated with a special Act. They are not incorporated with the Public Health Act, 1875.

25 & 26 VICT. c. 102.

S. 106. “No writ or process shall be sued out against or served upon, and no proceeding shall be instituted against the Metropolitan Board of Works, or any vestry or district board, or their clerks, or any clerks, &c., acting under their or any of their directions, for anything done or intended to be done under the powers of such board or vestry under the said Acts or this Act, until the expiration of one calendar month next after notice in writing shall have been served upon such board or vestry, or” shall have been “delivered to or left at the office or place of abode of” such clerk, &c., “stating the cause of action or grounds of the proceeding or demand,” &c.

38 & 39 VICT. c. 55 (*Public Health Act, 1875*).

S. 16. “Any local authority may carry any sewer . . . . after giving reasonable notice in writing to the owner or occupier (if on the report of the surveyor it appears necessary) into, through, or under any lands whatsoever within their district.

“They may also (subject to the provisions of this Act relating to sewage works without the district of the local authority) exercise all or any of the powers given by this section without their district for the purpose of outfall or distribution of sewage.”

S. 17. "Nothing in this Act shall authorise any local authority to  
 "make or use any sewer, drain or outfall for the purpose of conveying  
 "sewage or filthy water into any natural stream or watercourse, or  
 "into any canal, pond or lake, until such sewage or filthy water is  
 "freed from all excrementitious or other foul or noxious matter, such  
 "as would affect or deteriorate the purity and quality of the water in  
 "such stream or watercourse, or in such canal, pond or lake."

S. 68. "Any person engaged in the manufacture of gas, who—

- "(1) Causes or suffers to be brought or to flow into any stream,  
 "reservoir, aqueduct, pond or place for water, or into any  
 "drain or pipe communicating therewith, any washing or  
 "other substance produced in making or supplying gas; or
- "(2) Wilfully does any act connected with the making or supply-  
 "ing of gas, whereby the water in any such stream, reser-  
 "voir, aqueduct, pond or place for water is fouled,

"shall forfeit" the sums mentioned.

S. 69. "Any local authority, with the sanction of the Attorney-  
 "General, may, either in their own name or in the name of any  
 "other person, with the consent of such person, take such proceedings  
 "by indictment, bill in Chancery, action, or otherwise, as they may  
 "deem advisable for the purpose of protecting any watercourse within  
 "their jurisdiction from pollutions arising from sewage either within  
 "or without their district."

S. 264. "A writ or process shall not be sued out against or served  
 "on any local authority, or any member thereof, or any officer of a  
 "local authority, or person acting in his aid, for anything done or  
 "intended to be done, or omitted to be done under the provisions of  
 "this Act, until the expiration of one month after notice in writing  
 "has been served on such local authority, member, officer, or person,  
 "clearly stating the cause of action," &c.

S. 332. "Nothing in this Act shall be construed to authorise any  
 "local authority to injuriously affect any reservoir, canal, river, or  
 "stream, or the feeders thereof, or the supply, quality, or fall of water  
 "contained in any reservoir, canal, river, stream, or in the feeders  
 "thereof, in cases where any body of persons or person would, if this  
 "Act had not passed, have been entitled by law to prevent or be re-  
 "lieved against the injuriously affecting such reservoir, canal, river,  
 "stream, feeders, or such supply, quality, or fall of water, unless the  
 "local authority first obtain the consent in writing of the body of  
 "persons or person so entitled as aforesaid."

Moreover, section 57 incorporates the provisions of the Waterworks Clauses  
 Act, 1847, for guarding against fouling the water of the undertakers, *supra*,  
 p. 34.



## SHORT DIGEST OF CASES RELATING TO THE POLLUTION, &c., OF STREAMS.

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### I. REMEDY BY INJUNCTION.

#### (a.) *Private Rights.*

1. A riparian owner has a right to use the water of the stream in its natural state, whenever he pleases, free from such obstructions to the flow as would, if continued for twenty years, become prescriptive rights. *Crossley & Sons, Limited, v. Lightowler*, L. R. 3 Eq. 279, 2 Ch. 478.

Therefore, where a riparian owner, who has acquired a right to discharge foul water into the stream, has sold part of the land fronting the stream, he cannot (in the absence of a special reservation) claim a right to continue to foul the stream to the injury of the purchaser.

Injunction granted accordingly to restrain Defendants, who had, some years previously, sold a piece of land fronting a stream into which they had a prescriptive right to discharge foul water, to the Plaintiffs, from permitting the flow of water from their dyeing works into the stream, so as to affect the water opposite to the land of the Plaintiffs, to the damage of the Plaintiffs. *Ibid.*

It is no answer, in such a case, to say that the Plaintiff is not now actually using the water. *Ibid.*

2. A local board were empowered by a special Act to make sewers, "provided that it should not be lawful for them to cause any new sewer to open or drain into the river R. at any point above the T. Mill." They rebuilt and enlarged an old sewer (which discharged into the river above the T. Mill), making several new drains into it, and also built several new sewers, which were intended to discharge into the river above the T. Mill. Plaintiffs, the owners of the T. Mill, and of the river, for a considerable distance above the mill, prayed for an injunction to restrain the local board "from causing or permitting any sewer [or drain] to be opened into" the enlarged sewer, "or any other new sewer, to open or drain into the river R. at any point above

"the T. Mill." The injunction was granted, with the omission of the words in brackets. *Holt v. Corporation of Rochdale*, L. R. 10 Eq. 354.

A riparian owner may obtain an injunction to restrain a district board from polluting the stream, without giving notice of his intention to proceed against them, notwithstanding section 106 of 25 & 26 Viet. c. 102 (set out *supra*; and see section 264 of the Public Health Act, 1875, *supra*). *Att.-Gen. v. Hackney District Board*, L. R. 20 Eq. 626.

(b.) *What Extent of Nuisance gives a Right to an Injunction.*

1. "It is not in every case of nuisance that this Court should interfere. I think it ought not to do so in cases where the injury is merely temporary and trifling." *Per* Turner, L.J., in *Goldsmid v. Tunbridge Wells Improvement Commissioners*, L. R. 1 Ch. 349, 354.

2. The Local Board of C. discharged sewage into the river D., so as to pollute the river at the point of discharge; but at W., which was supplied with water for domestic purposes from the D., and was seven miles below the point of discharge, the pollution was imperceptible. Bill filed by the Local Board of W., charging that the pollution was a nuisance to the inhabitants of W., and praying for an injunction, dismissed with costs. *Att.-Gen. v. Cockermouth Local Board*, L. R. 18 Eq. 172.

3. Bill and information to restrain the Local Board of Health of a town from discharging sewage into a river dismissed with costs on the ground that the injury proved was trifling. *Att.-Gen. v. Gee*, L. R. 10 Eq. 131.

4. Defendant took water from a stream, and polluted it, and then restored it to its bed before reaching Plaintiff's premises, not polluted to an extent to interfere with Plaintiff's use of it for all purposes for which he used it. Injunction to restrain Defendant refused. *Elmhirst v. Spencer*, 2 Mac. & Gord. 45.

"The Plaintiff, before he can ask for an injunction, must prove that he has sustained such a substantial injury by the acts of the Defendants as would have entitled him to a verdict at law in an action for damages." *Per* Lord Cottenham, L. C., *Ib.* p. 50.

5. Therefore, in an order for an injunction to restrain Defendants from polluting a stream, it is proper to insert the words "to the injury of the Plaintiff" in order to establish a ground for the interference of the Court, and to prevent its authority from being invoked for trivial purposes. *Lingwood v. Stowmarket Company*, L. R. 1 Eq. 77 and 336.

6. Bill filed to restrain a Local Board of Health from discharging sewage into their river, so as to be a nuisance and injury to the Plaintiff. The Court, finding that the Plaintiff sustained no material injury,

and that the nuisance (if any) had been, to a great extent, abated since the filing of the bill, refused the injunction, and dismissed the bill, but without costs." *Lillywhite v. Trimmer*, 36 L. J. (Ch.) 525.

7. But where, though the present injury is inconsiderable, there is a probability of its continuance and increase, the Court will grant an injunction. *Goldsmid v. Tunbridge Wells Improvement Commissioners*, L. R. 1 Ch. 349; *Manchester, Sheffield, &c., Railway Company v. Workson Board of Health*, 23 Beav. 198.

(c.) *Increase of Nuisance.*

1. Where a prescriptive right to foul a stream has been acquired, the fouling must not be considerably increased to the prejudice of other people. *Crossley & Sons, Limited, v. Lightowler*, L. R. 2 Ch. 478; *Goldsmid v. Tunbridge Wells Improvement Commissioners*, L. R. 1 Ch. 349; *Att.-Gen. v. Metropolitan Board of Works*, 1 Hem. & M. 298; *Att.-Gen. v. Council of Borough of Birmingham*, 4 K. & J. 528; *Att.-Gen. v. Luton Local Board of Health*, 2 Jur. (N.S.) 180.

2. In such a case it is no answer to say that other persons are committing a like nuisance to the detriment of the Plaintiff. *Crossley & Sons, Limited, v. Lightowler*, L. R. 2 Ch. 478; *Att.-Gen. v. Colney Hatch Lunatic Asylum*, L. R. 4 Ch. 146; *Att.-Gen. v. Corporation of Leeds*, L. R. 5 Ch. 583.

3. But where it appeared that if the Defendants were restrained from polluting a stream, it would still be useless for the purposes of the Plaintiff, by reason of the pollutions caused by other persons, *whom the Plaintiff could not restrain*, an injunction to restrain the Defendants was refused, on the ground (*inter alia*) that, while it would do great injury to the Defendant, it would not restore, or tend to restore, the Plaintiff. *Wood v. Sutcliffe*, 2 Sim. (N.S.) 163.

(d.) *Of the Time for applying for an Injunction.*

1. Where works, causing a nuisance, were commenced six years, and completed five years, before the filing of the bill, an injunction was refused on the ground (*inter alia*) of delay. *Wood v. Sutcliffe*, 2 Sim. (N.S.) 163.

2. An injunction will not be granted to restrain an *apprehended* nuisance in the execution of works carried on under statutory powers: for, "when any person finds that the Legislature has authorised a "work to be done . . . he is not to assume it will create a nuisance . . . "and, until it is ascertained that the construction of the work will result "in a nuisance, I do not see how any person could sue." *Per Lord*

Hatherley, L.C. *Att.-Gen. v. Corporation of Leeds*, L. R. 5 Ch. 583, 594.

Defendants, in exercise of the powers given by the Towns Improvement Clauses Act, 1847, were constructing a new system of drainage, which, it was apprehended, would create a serious nuisance, but the evidence did not prove the present existence of a nuisance. An injunction to restrain the Defendants refused. *Att.-Gen. v. Mayor of Kingston*, 34 L. J. (Ch.) 481.

The local corporation were (by virtue of a special Act, and the parts therein incorporated of the Towns Improvement Clauses Act, 1847) empowered to discharge the sewage of their district into the river A., "but so that the same should in no case become a nuisance." In 1850 they commenced a sewer discharging into the river A., which was completed in 1853. In 1869 an information was filed, praying for an injunction to restrain the corporation from permitting the sewage of L. to pass through their sewer into the A., unless sufficiently purified and deodorised, so as not to be a nuisance. *Held*, that the delay was immaterial, and injunction granted. *Ibid*.

3. The Council of the Borough of B. were bound by a local Act to effectually drain their town. The effect of their scheme, when partially completed, was seriously to pollute the water of a river, at a point outside their district, where the bed of the river belonged to the Plaintiff. The Plaintiff submitted to the injury for nearly four years, trusting to the assurances of the council that the evil would be removed when the scheme was completed. *Held*, that the right of the Plaintiff to an injunction to restrain the council from polluting the river was not defeated by the delay. *Att.-Gen. v. Council of the Borough of Birmingham*, 4 K. & J. 528.<sup>a</sup>

(c.) *Exercise of Parliamentary Powers.*

1. Parliamentary powers to do an act do not authorize the commission of a nuisance, or the invasion of private rights, unless the powers cannot possibly be exercised without the commission of the nuisance, or the invasion of the rights. *Att.-Gen. v. Metropolitan Board of Works*, 1 Hem. & M. 298; *Att.-Gen. v. Council of Borough of Birmingham*, 4 K. & J. 528; *Att.-Gen. v. Colney Hatch Lunatic Asylum*, L. R. 4 Ch. 146.

2. But where there are great difficulties in the way of abating the nuisance, the Court will suspend the operation of the injunction for a

<sup>a</sup> Acquiescence in the erection of noxious works, while they produce little damage, will not deprive one of his remedy, if, by the subsequent increase of the works, he sustains a serious injury. *Bankart v. Houghton*, 27 Beav. 425.



reasonable time, to allow of the necessary steps being taken. *Att.-Gen. v. Council of Borough of Birmingham*, 4 K. & J. 528; *Att.-Gen. v. Corporation of Halifax*, 39 L. J. (Ch.) 129.

3. It makes no difference that a great community must suffer great inconvenience, if the invasion of the private rights be restrained. *Att.-Gen. v. Council of Borough of Birmingham*, 4 K. & J. 528.

4. Where an injunction is prayed to restrain the commission of a nuisance, in the exercise of parliamentary powers, it is no part of the duty of the Court to inquire how those powers may be exercised without the commission of a nuisance. *Att.-Gen. v. Colney Hatch Lunatic Asylum*, L. R. 4 Ch. 146.

5. Where the inhabitants of a town have acquired a prescriptive right to drain their sewage into a river, a public body empowered by statute to drain the town cannot claim the benefit of the prescription. *Att.-Gen. v. Council of Borough of Birmingham*, 4 K. & J. 528; *Att.-Gen. v. Luton Local Board of Health*, 2 Jur. (N.S.) 180.

6. By an Act, incorporating the Waterworks Clauses Act, 1847, a company was empowered to take water from the springs supplying the river C., provided that they should not take more than a certain quantity before they had constructed a compensation reservoir for storing flood water, for the benefit of the mill-owners on the C. A compensation reservoir was built, which, it was enacted by a subsequent Act, "should be a compensation reservoir . . . and be maintained for the "benefit of" the mill-owners there mentioned. On a bill filed by the owner of certain dye-works below the reservoir, alleging that the effect of the reservoir was to make the river more muddy than it had formerly been, and unfit for the process of dyeing, *Held*, that the Acts gave the company no power to foul the stream, and that consequently the compensation clauses of the Waterworks Clauses Act, 1847, did not apply, and that Plaintiff was entitled to an injunction. *Clowes v. Staffordshire Potteries Waterworks Co.*, L. R. 8 Ch. 125.

7. Where any of the clauses of the Towns Improvement Clauses Act are incorporated with a special Act, those clauses which fetter the exercise of every power contained in the general Act are also impliedly incorporated.

Accordingly, where a special Act, incorporating the 24th and certain other sections of the Towns Improvement Clauses Act, 1847, "except so far as they were inconsistent with the provisions of" the special Act, but not expressly incorporating the 107th section (set out *supra*), empowered a corporation to convey the sewage of their town into the river A., it was *held* that this power was controlled by the 107th section of the Towns Improvement Clauses Act, 1847, and that

the corporation were not authorised so to drain into the river as to create a nuisance. *Att.-Gen. v. Leeds Corporation*, L. R. 5 Ch. 583.

The proviso at the end of the 24th section of the Towns Improvement Clauses Act, 1847 (set out, *supra*), "so that the same shall in no case become a nuisance," controls the whole section, and not only the clause relating to the collection and sale of sewage. *Ibid.*

8. Upon an information filed by the Attorney-General to restrain a public body from transgressing powers conferred by an Act of Parliament, it is not necessary to prove that injury to the public will result from the acts complained of, and, in this respect, there is no difference between an *ex officio* information and an information filed at the relation of a private individual.

Accordingly, where a local board of health, purporting to act under 24 & 25 Vict. c. 61, s. 4, carried their sewage into a river, so as to deteriorate the water at the point of discharge, they were restrained by injunction, on an information filed at the relation of a private individual, though it did not appear that any one was injured. *Att.-Gen. v. Cockermouth Local Board*, L. R. 18 Eq. 172.

9. Where there has been an excess of the statutory powers granted to a company, but no injury has been occasioned to any individual, and there is none which is imminent or of irreparable consequence, the Attorney-General alone can obtain an injunction to restrain the excess. *Ware v. Regent's Canal Co.*, 3 De G. & J. 212.

10. *Sed contra.* Where persons had a right to watering places on a river adjoining their lands for the use of their cattle, it was held that they were "interested in" the river within the meaning of 11 & 12 Vict. c. 63, s. 145 (*vid.* the corresponding section (332) of the Public Health Act, 1875, *sup.*), and, consequently, that a local board of health were acting in excess of their powers in making an outfall for sewage above such watering places without the consent of such persons, and ought to be restrained by injunction upon a bill filed by such persons, whether they were injured or not. *Oldaker v. Hunt*, 6 De G. M. & G. 376.

11. The power given to the Home Secretary by 21 & 22 Vict. c. 104, s. 31, of proceeding against the Metropolitan Board of Works for causing a nuisance in the exercise of their powers, does not deprive private individuals of their right to proceed. *Att.-Gen. v. Metropolitan Board of Works*, 1 Hem. & M. 298.

12. Where Plaintiff has a right of property in the bed of a river, he can obtain an injunction to restrain an excessive exercise of statutory powers without making the Attorney-General a party, and without shewing special damage. *Holt v. Corporation of Rochdale*, L. R. 10 Eq. 354.

## II. REMEDY BY ACTION FOR DAMAGES.

(a.) *For Injury by Private Individuals.*

1. Every riparian owner "has a right to the advantage of the stream, flowing in its natural course, to use it when he pleases, for any purpose of his own, not inconsistent with a similar right in" other riparian owners. *Mason v. Hill*, 5 B. & Ad. 1, *per Cur.*; *S. P. Acton v. Blundell*, 12 M. & W. 324, *per Cur.* 348.

2. "Flowing water is *publici juris*, not in the sense that it is a *bonum vacans*, to which the first occupant may acquire an exclusive right, but that it is public and common in this sense only, that all may reasonably use it, who have a right of access to it." *Embrey v. Owen*, 6 Exch. 353, *per Cur.* 369.

3. An injury to this right is an injury *in law*, which will support an action by one who has appropriated, or desires to appropriate, the water to some useful purpose, even though no injury *in fact* be proved: unless a right to perpetrate the injury has been acquired by grant or prescription. *Mason v. Hill*, 5 B. & Ad. 1; *Wood v. Waud*, 3 Exch. 748; *Embrey v. Owen*, 6 Exch. 353.

4. It makes no difference whether the practice of injuring the water commenced before or after the Plaintiff's appropriation of it. *Mason v. Hill*, 5 B. & Ad. 1.

5. Whether such action could be maintained, before the appropriation of the water to a useful purpose, without showing special damage, *quære*. *Ibid.*

6. For more than twenty years before 1818, Plaintiff's predecessor, a riparian proprietor, had used the waters of the stream for watering his cattle and irrigation. In 1818 Defendants, superior riparian proprietors, built a mill near, but not on, the stream, and, by parol license from Plaintiff, carried water from a point A, on the bank of the stream, in the Plaintiff's land, to their mill. At the same time, without license, they diverted part of the water of a brook, which was one of the "feeders" of the stream, joining it above A. In 1823 Plaintiff built a mill and engine at a point B, below A; and, in 1829 he revoked the license which he had given to Defendants. Defendants then diverted the stream at a point below A and above B. Till 1829 Defendants had always returned all the water diverted by them from the stream and the feeder into the stream at a point above B. In and after 1829 they, on some days, returned none, and, on other days, returned only a part, and that so much heated, as to be much less beneficial to Plaintiff:—

*Held*, that Plaintiff could maintain an action for the diversion and

heating of the water of the "feeder," as well as that of the main stream. *Mason v. Hill*, 5 B. & Ad. 1.

It was argued that, in regard of the water of the feeder, no action would lie, because Defendants were the "first occupants" of that, they having used it, without license from the Plaintiff, before Plaintiff's mill was built, but—

*Held* (a.) That Plaintiff's predecessor had, for more than twenty years before 1818, "occupied" the whole water of the stream (which included the water coming into it above Plaintiff's premises from the feeder) for irrigation and watering his cattle, and it made no difference that Plaintiff wished to use it for a different purpose.

(b.) That, even if this were not so, Defendants' "occupancy" could not give them a right to injure the stream as against Plaintiff, the alleged right not having been enjoyed for twenty years. *Ibid.*

7. Plaintiffs were owners of a mill on a stream: Defendants, who were millowners higher up on the same stream, heated the water to an extent which made it less useful to Plaintiffs, and also polluted it to a considerable extent:—

*Held*, that Plaintiff could maintain an action. *Wood v. Waud*, 3 Exch. 748.

It was proved that Plaintiffs suffered no injury *in fact*, by reason of the water being so polluted above Defendants' mills (partly by the refuse of other mills, partly by the sewage of a town) that the additional pollution caused by the discharge of the refuse from Defendants' works was imperceptible:—

*Held*, that this was no defence to the action: for the pollution was an injury to Plaintiffs' right. *Ibid.*

The stream was fed in part by two artificial watercourses. Defendant's mill was supplied by water, part of which was diverted from the watercourses, before they joined the stream, and part from the stream. About five per cent. of all the water used was lost by evaporation, the remainder being returned to the stream. The Plaintiffs claimed also in respect of this loss:—

*Held*, that, as to so much of the declaration as related to loss of the water from the artificial watercourses, the verdict must be entered for Plaintiffs, on a plea of "not guilty": for, on this plea, the right of the Plaintiffs to the water must be assumed, and a loss of five per cent. would be sufficient to sustain an action. *Ibid.*

8. But it is only for an unreasonable and unauthorized use of the water that one riparian owner can maintain an action against another, without showing special damage: for, a reasonable use by one proprietor is no interference with the rights of other proprietors. *Embrey v. Owen*, 6 Exch. 353.



Therefore, where a millowner on a stream brought an action against a superior riparian proprietor, on the ground that the Defendant was in the habit of diverting the water, for purposes of irrigation, and it was proved that the loss by such diversion was not cognisable by the senses, and did not interfere with the working of Plaintiff's mill :—

*Held*, that the action could not be maintained. *Ibid*.

9. A riparian owner derives his rights in respect of the water from possession of land abutting on the stream. If, therefore, a riparian proprietor affect to grant water rights, without conveying that part of the riparian estate which abuts on the stream, the grant, though valid as against the grantor, can create no rights for the interruption of which the grantee can sue a third party in his own name. *Stockport Waterworks Company v. Potter*, 3 H. & C. 300.

The abstraction of water from a natural stream openly, and under a claim of right, for a period of twenty years, to a tenement not abutting on the stream will create no easement to have pure water flow down to the point of abstraction. *Ibid*.

A riparian owner had conveyed part of his estate, not abutting on the river, to the Plaintiffs' predecessor, together with right to take water from the stream at a point on the vendor's land, and convey it by pipes to the land sold :—

*Held*, that Plaintiffs could not, by virtue of the grant, maintain an action against a riparian proprietor, whose lands lay above the point of diversion, for fouling the stream. *Ibid*.

Plaintiffs then contended that for more than twenty years they and their predecessors had diverted the water at the point in question openly and as of right :—

*Held*, that (even if this were so) they had not acquired an easement against superior riparian proprietors, to have a pure flow of water. *Ibid*.

10. Defendant having discharged arsenic, and other injurious matter, from his works into a stream, which he might have avoided doing by certain expedients :—

*Held*, that he could not defend himself in an action arising therefrom, by showing that his trade was a lawful one, carried on in a proper manner. *Stockport Waterworks Company v. Potter*, 7 Jur. (N.S.) 380.

Carrying on a lawful trade in the ordinary and obvious manner is not necessarily carrying it on "in a proper manner" according to the meaning of the decision in *Hole v. Barlow*, 4 C. B. (N.S.) 334. *Ibid*.

When this defence is attempted, it lies on the Defendant to prove

that the trade is a lawful trade, lawfully carried on, not on the Plaintiff to shew the contrary. *Ibid.*

11. Plaintiff was the owner of a mill, which, from time immemorial, had been supplied by water which percolated from the surface of the M. hills into a cavern, over the floor of which it ran in a defined stream: thence it passed, by an underground passage, to a natural basin on Plaintiff's lands, and thence, in an open and defined stream, to Plaintiff's mill. Defendant erected works on a part of the M. hills, higher than the cavern; he drained refuse water into drains communicating with "swallets," *i.e.* rents in the rock, which served as natural drains for carrying off the rainfall from the surface of the M. hills; the swallets communicated with an underground passage; after running through this passage, the water ran in an open and defined stream to the cavern. The result of the Defendant sending his refuse water down the swallets was to make the stream unfit for Plaintiff's purposes:—

*Held*, that Plaintiff might maintain an action against Defendant for polluting the stream. *Hodgkinson v. Ensor*, 4 B. & S. 229.

12. A right may be acquired to the water of an artificial watercourse, such as to sustain an action for fouling it. *Magor v. Chadwick*, 11 A. & E. 571.

A mine was drained by an artificial watercourse. Upon the discontinuance of the working of the mine, Plaintiffs used the water for the purposes of a brewery for upwards of twenty years:—

*Held*, that they might maintain an action against the owners of some other mines for the pollution of the stream. *Ibid.*

13. "The right to artificial watercourses, as against the party creating them, must depend upon the character of the watercourse, whether it be of a permanent or temporary nature, and upon the circumstances under which it is created." *Wood v. Waud*, 3 Exch. 748; *per Cur.* 777.

Where it is clear, from the circumstances, that "the one party (*i.e.* the maker of the watercourse) never intended to give, nor the other to enjoy, the use of the stream, as a matter of right," a user of twenty years will not confer such a right. *Ibid.* 778.

And, in such circumstances, a riparian owner "has no right to compel the owners above to permit the water to flow through their lands for his benefit; and consequently he has no right of action, if they refuse to do so.

"If they polluted the water, so as to be injurious to the tenant below, the case would be different." *Ibid.* 779.

Plaintiffs were owners of a mill upon a natural stream, into which flowed two artificial watercourses, which drained certain mines. De-

defendants were owners of a mill, higher up the stream than Plaintiff's mill. Defendant's mill was supplied with water, part of which was diverted from the watercourses before they joined the stream, and the remainder from the stream itself. Part of the water used by Defendants was lost by evaporation; the remainder was returned into the stream above Plaintiff's mill, in a foul and heated condition:—

*Held*, that so much of the action as related to the abstraction of the water from the artificial watercourses, could not be sustained. *Ibid*.

14. Where an artificial watercourse is intended to be permanent, prescriptive rights may be acquired in it. *Gaved v. Martyn*, 19 C. B. (N.S.) 732.

(b.) *Against Bodies acting under Statutory Powers.*

1. The drainage of a district had for many years been carried into a stream (affecting the same in an inappreciable degree only), which afterwards, and beyond the limits of the district, flowed through Plaintiff's land. The population of the district subsequently much increased, and, further drainage becoming necessary, the Board of Health for the district executed additional works, the effect of which was to cause substantial injury to the Plaintiff, by reason of the pollution of the stream. The Court below having held that Plaintiff was entitled to compensation, under 18 & 19 Vict. c. 120, s. 86, but had no remedy by action, the majority of the Court of Exchequer Chamber, on error, reversed such decision. *Cator v. Board of Works for the Lewisham District*, 11 Jur. (N.S.) 340.

2. An action was held to lie against a local board for injuries occasioned by their *negligence* in exercising the powers of the Public Health Act, 1848, such injuries not being the subject of compensation under s. 144 of that Act. *Southampton and Itchin Bridge Company v. Southampton Local Board*, 8 E. & B. 801.

3. Where a local board, acting under the powers of the Public Health Act, 1848, "injuriously affected" a river, within the meaning of 21 & 22 Vict. c. 98, s. 73, in a case where "any individual would, "if" the last-mentioned Act "had not been passed, have been entitled "by law to prevent, or be relieved against the injuriously affecting "such river," without the consent of such individual:—

*Held*, that such individual could not sustain a mandamus against the Board to summon a jury to assess him compensation, because he could maintain an action and obtain an injunction. *Reg. v. Darlington Local Board of Health*, 35 L. J. (Q.B.) 45.

4. Defendants erected a gas-tank in 1854. It was in all respects properly built. Coal mines had previously been worked in the neigh-

bourhood, and close to the site of the gas-tank ; but Defendants did not know this at the time of building their tank, and probably such workings would not have injured the tank. In 1855, other mines were worked close up to the tank, causing a fissure in the floor of the tank, through which the washings percolated into Plaintiff's well, making the water unfit for domestic use :—

*Held*, that Defendants had “suffered” the washings to flow into the well, within the meaning of a clause of a private Act of Parliament, similar to the Gasworks Clauses Act, 1847, s. 21. *Hipkins v. Birmingham and Staffordshire Gas Light Co.*, 6 H. & N. 250.

5. “The true intent of the Legislature is, that when any person “named in the section (25 & 26 Vict. c. 102, s. 106, *supra*) is directed “to do a thing, if any such person orders others to do it, they are “entitled to notice of action.” *Chambers v. Reid*, 13 L. T. (N.S.) 703.

### III. REMEDY BY INDICTMENT.

1. A canal company were empowered by an Act of Parliament to take the water of certain brooks, and use it for the purposes of their canal ; the water in one of the brooks, at the time the Act was passed, was pure, but it afterwards became polluted with sewage before it reached the canal, and it was then penned back in the canal, and became a public nuisance :—

*Held*, that the company were liable to be indicted for the nuisance, as there was nothing in the Act compelling them to take the water, or authorizing them to use it, so as to create a nuisance. *Reg. v. Bradford Navigation Company*, 34 L. J. (Q.B.) 191.

“When statutory powers are conferred under circumstances in “which the powers may be exercised, without in themselves causing “any nuisance, and new and unforeseen circumstances render the exercise of the powers impossible without a breach of the law, those “powers cannot be exercised without rendering the parties liable.” *Ibid.* *Per* Cockburn, C.J. 199.

2. But where the Legislature authorizes an act which must in itself be a nuisance, an indictment will not lie. *R. v. Pease*, 4 B. & Ad. 30.



## NOTE AS TO FOREIGN LAW.

IN Prussia, though there are no special regulations for the inspection of factories in order to prevent the pollution of running waters, there are very simple means of interference in every separate case of pollution by manufacturing refuse. Thus, by the statute of July 1st, 1861, most of the processes which are likely to pollute water require a special police licence; and by a statute passed as far back as 1843, no water applied to dyeing, tanning, fulling, or other similar purposes, is to be suffered to enter a river, if thereby the means of procuring clean water be endangered to the neighbourhood; and by a regulation dating from October 28th, 1846, the owners of such works as impregnate the water used in any manufactory with materials hurtful to meadow land must, in accordance with the judgment and direction of the police authorities, precipitate their materials in subsidence ponds, or otherwise, under penalty of a fine.

In Belgium there are various local regulations, having the force of law, which impose a penalty upon those who pollute rivers either by throwing in solid materials which may impede the course of the stream, or by allowing liquid matter which may foul or corrupt the water to flow into it. Manufactories which produce such refuse are bound to construct reservoirs sufficiently large to contain a day's supply of this refuse, in order that sufficient settlement may take place, and the supernatant fluid only is allowed to be run off. In many districts weirs, either temporary or permanent, cannot be constructed without permission of the authorities.

In France there are old regulations applicable generally to all *navigable* rivers, prohibiting the erection of mills and weirs, as well as the pollution of the water by solid refuse, such as gravel, straw, and dung; and power has been given to the local authorities to watch over the state of the smaller streams, and to prevent the pollution of the water by the steeping of flax and hemp, or by the refuse of manufacturing establishments.



# INDEX.

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N.B.—The initials *P.H.A.* refer to the “*Public Health Act, 1875*”; *R.P.P.A.* to the “*Rivers Pollution Prevention Act, 1876.*”

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